140-71
140-71

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

No. ~~907~~. ~~587~~ 284

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF HARPER, PLAINTIFF IN ERROR.

vs.

EDWARD ROSE.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KANSAS.

FILED OCTOBER 25, 1887.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

No. 907.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF HARPER, PLAINTIFF IN ERROR.

vs.

EDWARD ROSE.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KANSAS.

INDEX.

	Original.	Print.
Stipulation in regard to record	1	1
Petition	3	2
Summons	8	5
Marshal's return	8½	6
Stipulation extending time to answer	9	7
Demurrer	10	7
Stipulation as to pleading	12	8
Decision of demurrer	13	9
Order sustaining demurrer in part	14	9
Answer	15	10
Reply	17	11
Motion for judgment on the pleadings	18	12
Trial	19	12
Verdict and judgment	20	13
Motion for new trial	21	13
Order overruling motion for new trial	23	13
Order allowing bill of exceptions	23	13
Bill of exceptions	24	14
Deposition of Francis Seibermann	25	16
Edward Rose	39	25
Testimony of W. T. Cavanaugh	50	31
Record of organization of Harper Co.	51	32
Testimony of Atterson W. Rucker	64	42
W. T. Cavanaugh (recalled)	70	46

JUDD & DETWEILER, PRINTERS, WASHINGTON, OCTOBER 10, 1888.

	Original.	Print.
Abstract of votes polled, Nov. 4, 1873	73	47
Testimony of Geo. W. Crane	75	48
Letter of Horner to Crane, Oct. 16, 1873	76	48
Letter of Weaver to Crane, —— —, ——	81	51
Exhibit A—Copy of bond	83	52
Section 28, chap. 77, of session laws of 1874	85	53
Defendant's offers	86	53
Deposition of Emily S. Rice	86	53
D. F. Long	87	54
L. L. Butler	88	54
O. S. Northrup	88	55
H. J. Devore	88	55
T. H. Stevens	88	55
Geo. Lutz	89	55
C. B. Smith	90	56
Motion for new trial	90	56
Bond	93	57
Clerk's certificate	95	58
Writ of error	96	58
Citation and proof of service of same	97	59
Assignment of errors	98	60

1 *Stipulation in Regard to Record.*

In the Circuit Court of the United States of America, District of Kansas.

EDWARD ROSE, Plaintiff,

vs.

THE BOARD OF COUNTY COMMISSIONERS OF HARPER COUNTY, KANSAS, Defendant.

It is hereby stipulated and agreed by and between the plaintiff, Edward Rose, and the defendant, The Board of County Commissioners of Harper County, Kansas, that the clerk of this court, in making a record for the supreme court, shall copy as the petition of pl't'f—

First. The heading of plaintiff's petition and the first cause of action, as stated in said plaintiff's petition, together with the copy of the bond No. 1 of plaintiff's petition, as referred to in said first cause of action in plaintiff's petition, together with the endorsement on the back of said bond, as shown by said petition.

It is further stipulated that each of the first twenty causes of action, as stated in said plaintiff's petition, is exactly like said first cause of action, except as to the numbers of the bonds sued on in this action, said bonds being numbered from one to ten, inclusive, and from thirty to forty, inclusive, and being twenty different causes of action on twenty different bonds of five hundred dollars each.

Second. That the clerk of this court shall copy only the twenty-first cause of action in plaintiff's petition, together with the prayer for relief contained in said petition. It is further stipulated and agreed that there is stated in said petition three hundred and eighty causes of action exactly the same as the 21st cause of action, except as to the number of the coupon sued on and the date when the same becomes due.

2 I. A. LOVE AND FINCH & FINCH,
Att'ys for Defendants, The Board of County Commissioners of Harper County.
ROSSINGTON, SMITH & DALLAS,
Att'ys for Pl't'f.

Endorsed: No. 5285. Edward Rose *vs.* The Board of County Commissioners of Harper County. Stipulation. Filed Sept. 23, 1887. A. S. Thomas, clerk, by Frank H. Holt, deputy.

3 *Petition.*

In the Circuit Court of the United States, District of Kansas.

EDWARD ROSE, Plaintiff,

vs.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF HARPER, STATE OF KANSAS, Defendant.

The said plaintiff complains of said defendant for that he is a resident of the city and county of St. Louis, in the State of Missouri, and a citizen of said State, and the defendant, the said Board of County Commissioners of the County of Harper and State of Kansas, is a body politic and corporate existing under and by virtue of the laws of the State of Kansas, and are citizens of said State; and the amount in controversy, as hereinafter stated, exceeds the sum or value of five hundred dollars, exclusive of costs.

And thereupon the said plaintiff brings this action of debt against the said Board of County Commissioners of the County of Harper, in said State.

4 And for first cause of action plaintiffs say—

That on the first day of December, 1873, at Bluff City, in the county of Harper and State of Kansas, the said defendant made and issued its certain bond, dated on said day at said place, whereby, for value received, it promised on the first day of December, A. D. 1883, to pay to bearer five hundred dollars, at the National Park Bank, in the city of New York, with interest at the rate of ten per cent. per annum, payable semi-annually at said National Park Bank, according to divers coupons thereto attached, which bond, in order to distinguish it from others of like character, was marked No. one. A copy of said bond, except as to number, is hereto attached and made a part hereof.

That on the 12th day of March, 1874, said bond was duly registered in the office of the auditor of State.

That before said bond by its terms became due and payable the said bond came to and for value became the property of this plaintiff, who therefore became and has ever since been and still is the true and lawful owner and holder thereof; that when said bond by its terms became due and payable the same was duly presented at the place of payment therein mentioned and payment demanded, but refused because said defendant had not nor did it ever have funds at said place; that the said plaintiff has often applied to said defendant to pay the said bond, but it has refused to do so, notwithstanding it is justly indebted thereon to the plaintiff in the full sum of five hundred dollars, which he claims, with interest from the first day of December, 1883:

5 UNITED STATES OF AMERICA, *State of Kansas.*

Number 1. Dollars, 500.

Court-House Bond of Harper County.

Know all men by these presents that the county of Harper, in the State of Kansas, acknowledges itself to owe and promises to pay to bearer five hundred dollars, lawful money of the United States of America, on the first day of December, A. D. eighteen hundred and eighty-three, at the National **(500)** Park Bank, in the city of New York, with interest at the rate of ten per cent. per annum, payable semi-annually on the first days of June and December of each year, on the surrender of the annexed coupons as they become due, at said National Park Bank in the city of New York.

This bond is one of a series of fifty bonds, of five hundred dollars each, issued for the purpose of building a court-house in said county in pursuance of and in accordance with the vote of a majority of over three-fifths of the qualified electors of said county of Harper, at an election held for that purpose, as required by law, on the 4th day of November, A. D. 1873.

In testimony whereof the board of county commissioners of said county have caused this bond to be signed by the chairman of said board and by the county clerk of said county and to be sealed with the seal of said county and to be registered, as required by law, at Bluff City, the county seat of said county, this first day of December, A. D. 1873.

[County Clerk Seal, Harper County, Kansas.]

N. W. WEAVER,
Chairman Board of County Commissioners.

Attest: G. H. WALKER,
County Clerk of Harper County.

5½ Court-house bond of Harper county, State of Kansas.

I, D. W. Wilder, auditor of the State of Kansas, do hereby certify that this bond has been regularly and legally issued, and that the signatures thereto are genuine, and that such bond has been duly registered in my office, in accordance with an act of the Legislature entitled An act to authorize counties, incorporated cities, and municipal townships to issue bonds for the purpose of building bridges, aiding in the construction of railroads, or other works of internal improvements, and providing for the registration of such bonds, the registration of other bonds, and the repealing of all laws in conflict therewith.

Approved March 2d, 1873.

Witness my hand and official seal this 12th day of March, 1874.

[SEAL.] D. W. WILDER,
Auditor of State.

6 And for 21st cause of action plaintiff says—

That on the first day of December, 1873, at Bluff City, in the county of Harper and State of Kansas, the said defendant made and issued its certain bond dated on said day at said place, whereby, for value received, it promised on the first day of December, A. D. 1883, to pay to bearer five hundred dollars at the National Park Bank in the city of New York, with interest at the rate of ten per cent. per annum, payable semi-annually at said bank according to divers coupons thereto attached, which bond, in order to distinguish it from others of like character, was marked No. one; a copy of said bond, except as to number, is hereto attached and made part hereof; that on the twelfth day of March, 1874, said bond was duly registered in the office of the auditor of state; that attached thereto was, among others, a certain coupon, bearing date on the day and at the place aforementioned, made by said board of county commissioners of the county of Harper, whereby it promised to pay to the bearer thereof twenty-five dollars at said bank on the first day of December, 1874, for the interest then and there to be due on said bond; which coupon is in words and figures as follows:

The county of Harper, State of Kansas, will pay to bearer at the National Park Bank in the city **(2)** of New York, on the first day of December, A. D. 1874, twenty-five dollars for six months' interest due on court-house bond No. one.

N. W. WEAVER,
Chairman Board of County Commissioners.

Attest: G. H. WALKER,
County Clerk.

That before said coupon by its terms became due and payable the said bond, together with said coupon, came to and for value became the property of this plaintiff, who therefore became and has ever since been and still is the true and lawful owner and holder thereof; that when said coupon by its terms became due and payable the same was duly presented at the place of payment therein mentioned and payment demanded, but refused because said defendant had not nor did it ever have funds at said place; that the said plaintiff has often applied to said defendant to pay the said coupon, but it has refused so to do, notwithstanding it is justly indebted thereon to the plaintiff in the full sum of twenty-five dollars, which he claims, with interest from the first day of December, 1874.

7 Wherefore said plaintiff prays judgment against said defendant for the sum of five hundred dollars, with interest thereon at seven per cent. per annum, from December 1, 1874; and five hundred dollars, with interest at seven per cent., from June 1, 1875; and five hundred dollars, with interest at seven per cent., from December 1, 1875; and five hundred dollars, with interest at seven per cent., from June 1, 1876; and five hundred dollars, with interest at seven per cent., from December 1, 1876; and five hundred dollars, with interest at seven per cent., from June 1, 1877; and five hundred dollars, with interest at seven per cent., from Decem-

ber 1, 1877; and five hundred dollars, with interest at seven per cent., from June 1, 1878; and five hundred dollars, with interest at seven per cent., from December 1, 1878; and five hundred dollars, with interest at seven per cent., from June 1, 1879; and five hundred dollars, with interest at seven per cent., from December 1, 1879; and five hundred dollars, with interest at seven per cent., from June 1, 1880; and five hundred dollars, with interest at seven per cent., from December 1, 1880; and five hundred dollars, with interest at seven per cent., from June 1, 1881; and five hundred dollars, with interest at seven per cent., from December 1, 1881; and five hundred dollars, with interest at seven per cent., from June 1, 1882; and five hundred dollars, with interest at seven per cent., from December 1, 1882; and five hundred dollars, with interest at seven per cent., from June 1, 1883; and five hundred dollars, with interest at seven per cent., from December 1, 1883; together with the sum of ten thousand dollars, with interest thereon from the first day of December, 1883.

ROSSINGTON, SMITH & DALLAS,
Att'ys for Plaintiff.

Endorsed: No. 5285. Circuit court, U. S. Edward Rose, plaintiff, *vs.* The Board of County Commissioners of Harper County, Kansas, defendant. Petition. Rossington, Smith & Dallas, attorneys for plaintiff. Filed Nov. 18, 1885. A. S. Thomas, clerk, by Frank H. Holt, deputy.

8 THE UNITED STATES OF AMERICA, *ss:*

Circuit Court of the United States of America, District of Kansas.

To the marshal of the district of Kansas, Greeting:

You are hereby commanded to notify the Board of County Commissioners of the County of Harper, State of Kansas, that it has been sued by Edward Rose in the circuit court of the United States for the district of Kansas, and that unless it answer by the 18th day of December, A. D. 1885, the petition of the said Edward Rose against it filed in the clerk's office of the said court such petition will be taken as true and judgment rendered accordingly. You will make due return of this writ on the 28th day of November, A. D. 1885.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Topeka, in said district, this 18th day of November, A. D. 1885.

[SEAL.] A. S. THOMAS, *Clerk*,
By FRANK H. HOLT, *Deputy*.

8½ [Endorsed:] No. 5285. Circuit court of the United States, district of Kansas. Edward Rose *vs.* The Board of County Commissioners of the County of Harper, State of Kansas. Summons. Issued Nov. 18, 1885. Returnable Nov. 28, 1885. Filed Nov. 23, 1885. A. S. Thomas, clerk, by Frank H. Holt, deputy. Rossington, Smith & Dallas, attorneys for plaintiff.

U. S. Marshal's Return.

DISTRICT OF KANSAS, *ss:*

Received the within writ November the 18th, 1885, and executed the same as follows, to wit:

Served on the within-named defendants at Harper county, State and district of Kansas, on the 21st day of November, 1885, by delivering to Mrs. E. S. Rice, county clerk of Harper county, State of Kansas, & clerk of the within-named defendant, a true and certified copy of the within summons, with all the endorsements thereon.

W. C. JONES, *U. S. Marshal,*
By T. W. THOMPSON, *Deputy.*

Service	2 00
R. R.	14 54
Livery	2 00
Hotel & bus	4 50
	$22 04

Suit brought for the recovery of money; amount claimed, five hundred dollars, with interest thereon at seven per cent. per annum from December 1st, 1874; and five hundred dollars, with interest at seven per cent. from June 1, 1875; and five hundred dollars, with interest at seven per cent. from December 1, 1875; and five hundred dollars, with interest at seven per cent. from June 1, 1876; and five hundred dollars, with interest at seven per cent. from December 1, 1876; and five hundred dollars, with interest at seven per cent. from June 1, 1877; and five hundred dollars, with interest at seven per cent. from December 1, 1877; and five hundred dollars, with interest at seven per cent. from June 1, 1878; and five hundred dollars, with interest at seven per cent. from December 1, 1878; and five hundred dollars, with interest at seven per cent. from June 1, 1879; and five hundred dollars, with interest at seven per cent. from December 1, 1879; and five hundred dollars, with interest at seven per cent. from June 1, 1880; and five hundred dollars, with interest at seven per cent. from December 1, 1880; and five hundred dollars, with interest at seven per cent. from June 1, 1881; and five hundred dollars, with interest from December 1, 1881; and five hundred dollars, with interest at seven per cent. from June 1, 1882; and five hundred dollars, with interest at seven per cent. from December 1, 1882; and five hundred dollars, with interest at seven per cent. from June 1, 1883; and five hundred dollars, with interest from December 1, 1883, together with the sum of ten thousand dollars, with interest thereon from the first day of December, 1883.

A. S. THOMAS, *Clerk,*
By FRANK H. HOLT, *Deputy.*

ROSSINGTON, SMITH & DALLAS,
Attorneys for Plaintiff.

9 In the Circuit Court of the United States, District of Kansas.

EDWARD ROSE, Plaintiff,

vs.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF HARPER, Defendant.

It is hereby stipulated and agreed by and between the said plaintiff and defendant that the time for said defendant to answer in the above-entitled cause be extended thirty days from the 18th day of December, 1885.

Topeka, Kas., Dec'r 16th, 1885.

ROSSINGTON, SMITH & DALLAS,
Att'ys for Pl'ff.

E. J. FISHER,
G. W. FINCH,
ISAAC A. LOVE,
Att'ys for Def'ts.

Endorsed: No. 5285. Edward Rose, pl'ff, *vs.* Board of County Commissioners Harper County, Kansas, def't. Stipulation for extension of time to answer to 17 day of January, 1886. Filed Dec. 16, 1885. A. S. Thomas, clerk, by Frank J. Thomas, deputy.

10 *Gen. & Sep. Dem., &c.*

In the Circuit Court of the United States, District of Kansas.

EDWARD ROSE, Plaintiff,

vs.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF —, STATE OF KANSAS, Defendant.

Demurrer.

The said defendant demurs to the petition of the plaintiff herein for the reason that said petition does not state facts sufficient to constitute a cause of action.

And the said defendant demurs separately to each cause of action stated in the plaintiff's petition herein filed for the reason that neither of the said 399 causes of action therein stated states facts sufficient to constitute a cause of action.

And further the said defendant demurs to the following causes of action stated — the petition of the plaintiff herein, to wit:

Causes of action Nos. 22, 21, 24, 23, 26, 25, 28, 27, 30, 29, 32, 31, 40, 42, 41, 44, 43, 46, 45, 48, 47, 50, 49, 51, 60, 59, 62, 61, 64, 63, 66, 65, 68, 67, 70, 69, 80, 79, 82, 81, 84, 83, 86, 85, 88, 87, 89, 98, 97, 100, 99, 102, 101, 104, 103, 106, 105, 108, 107, 116, 115, 118, 117, 120, 119, 122, 121, 124, 123, 126, 125, 127, 136, 135, 138, 137, 140, 139, 142, 141, 144, 143, 146, 145, 154, 156, 155, 157, 160, 159, 162, 161, 164, 163, 165, 174, 173, 176, 175, 178, 177, 180, 179, 182, 181, 184, 183,

192, 191, 194, 193, 196, 195, 198, 197, 200, 199, 202, 201, 203, 212, 211, 214, 213, 216, 215, 218, 217, 220, 219, 222, 221, 230, 232, 231, 234, 233, 236, 235, 238, 237, 240, 239, 241, 250, 249, 252, 251, 254, 253, 256, 255, 258, 257, 260, 259, 268, 270, 269, 272, 271, 274, 273, 276, 275, 378, 277, 279, 288, 287, 290, 289, 292, 291, 294, 293, 296, 295, 298, 297, 306, 308, 307, 310, 309, 312, 311, 314, 313,
11 316, 315, 317, 326, 325, 328, 327, 330, 329, 332, 331, 334, 333, 336, 335, 344, 346, 345, 348, 347, 350, 349, 352, 351, 354, 353, 364, 363, 366, 365, 368, 367, 370, 369, 372, 371, 374, 373, 382, 384, 383, 386, 385, 388, 387, 390, 389, 392, 391, 393, for the reason that each of said causes are barred by the statute of limitations, the action being upon contract in writing and it not having been begun within five years after the said cause had accrued, according to the facts stated in said causes of action aforesaid.

Wherefore the said defendant prays for judgment on these demurrers and for costs.

E. J. FISHER,
ISAAC A. LOVE, AND
FINCH AND FINCH,
Attorneys for Defendant.

Endorsed: No. 5285. Circuit court U. S. Edward Rose, plaintiff, *vs.* The Board of County Commissioners of Harper County, Kansas, defendant. General and separate demurrer to petition. Filed Jan'y 12, 1886. A. S. Thomas, clerk, by Frank H. Holt, deputy. Fisher, Love, and Finch, att'ys for def't.

12 *Stipulation.*

In the Circuit Court of the United States for the District of Kansas.

EDWARD ROSE, Plaintiff,

vs.

THE BOARD OF COUNTY COMMISSIONERS OF HARPER COUNTY, KANSAS, Defendant.

It is hereby stipulated and agreed by and between the attorneys for the parties to the above action that when the court decides the demurrer of the defendant to the plaintiff's petition, if the same is sustained, the plaintiff shall have leave to amend within 30 days and the defendant leave to plead to amended petition within 30 days from the filing of the amended petition; and in case the demurrer should be overruled, or sustained in part and overruled in part, that then the defendant reserves an exception to such ruling as to the part overruling said demurrer, and leave is granted to the defendant to file answer within 60 days from date of such ruling.

ROSSINGTON, SMITH & DALLAS,
Att'ys for Pl'ff.

FISHER, LOVE & FINCH,
Att'ys for Def't.

Endorsed: No. 5285. Ed. Rose, pl'ff, *vs.* Board Co. Com. of Harper County, Kans. Stipulation as to pleading. Filed Jan'y 22, 1886. A. S. Thomas, clerk, by Frank J. Thomas, deputy.

13 U. S. C. C.

EDWARD ROSE *vs.* COM'RS OF HARPER CO.

Demur to petition because it does not aver registration of bonds, & because it appears certain coupons are barred by the statute of limitation.

The stat. of 1872 is not clear whether it is the registration by the State auditor or the registration at the county seat, or both, that is required to make the bonds negotiable, &c., but the petition in this case avers that the bonds were registered by the auditor of State, and the bonds themselves, a copy of which is attached & made a part of the petition, in the attesting clause aver that the bond has been registered at Bluff City, the county seat of said county.

I think the petition is sufficient in this respect. As to the question of limitation, the only point made is as to a question of practice, whether it should be made by plea or demur.

The practice in this State is to permit it to be raised on demurrer & I will follow that practice. Demurrer sustained as to limitation on coupons & overruled as to other matter.

Endorsed: No. 5285. Rose *v.* Harper Co. Decision of demurrer. Filed Jan'y 27, 1886. A. S. Thomas, clerk, by Frank J. Thomas, deputy.

14 UNITED STATES OF AMERICA, } *ss:*
District of Kansas, }

At a term of the circuit court of the United States of America for the district of Kansas, begun and held at the city of Topeka, in said district, on Monday, the 23rd day of Nov., A. D. 1885, proceedings were had and appear of record in words and figures following, to wit:

EDWARD ROSE
vs.
THE BOARD OF COUNTY COMMISSIONERS OF HARPER COUNTY, KAS. } 5285.

WEDNESDAY, *Jan'y* 27, 1886.

The defendant's demurrer to the plaintiff's petition filed herein came on to be heard and was argued by counsel; on consideration whereof the court doth sustain said demurrer as to limitations on coupons and overrules it as to other matters.

15 *Answer.*

In the Circuit Court of the United States for the District of Kansas.

EDWARD ROSE, Plaintiff,

vs.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF HARPER AND STATE OF KANSAS, Defendant.

Now comes the defendant and for answer to the plaintiff's petition herein denies each and every material allegation contained therein, except those hereinafter expressly admitted.

And the defendant, for a further and second answer to the plaintiff's petition herein, admits that it was a body politic and corporate at the time of the beginning of the above action, but denies that it was a body politic or corporate or existing under and by virtue of the laws of the State of Kansas on the 1st day of December, 1873, or any time prior thereto, and never was until March 17th, 1874.

And the defendant, for a further and third answer to the plaintiff's petition herein, denies that on December 1st, 1873, or at any time prior thereto, or until March 17th, 1874, N. W. Weaver was chairman of the Board of County Commissioners of Harper County, Kansas, or that G. H. Walker was county clerk of Harper county, Kansas.

And the defendant, for a further and fourth answer to the plaintiff's petition herein, denies that the Board of County Commissioners of the County of Harper and State of Kansas ever made, executed, or delivered the bonds sued on in this action and described in the said petition or any of the coupons attached thereto and sued upon in the above-entitled action.

And, for a further and fifth answer to the plaintiff's petition herein, the defendant denies that at the time the bonds and coupons sued upon are alleged to have been issued that there was any
16 person or persons, body corporate or politic, in the county of Harper and State of Kansas who had any authority or power to issue the said bonds and coupons sued upon in this action.

And, for a further and sixth answer to the plaintiff's petition herein, the defendant denies, 1st, that the bonds and coupons were ever registered in Harper county as required by law; 2nd, that there ever was any election held as to the issuance of said bonds prior to their pretended issue, as required by law.

And, for a further and seventh answer to the plaintiff's petition herein, the defendant says that all papers, acts, and statements relating to the organization attempted of the county of Harper and State of Kansas, August 20th, 1873, and everything contained therein, were false, fraudulent, and forged, and that the said bonds and coupons and all acts as to their attempted issue were false, fraudulent, and forged.

Wherefore the defendant prays judgment for costs and such other and further relief as to the court may seem just and proper.

EDWARD J. FISHER,
I. A. LOVE &
G. W. FINCH,
Att'ys for Def't.

STATE OF KANSAS, } ss :
Harper County, }

I, Edward J. Fisher, one of the attorneys for the defendant, being duly sworn, say that the statements and allegations contained in the foregoing answer and each of them are true in substance and in fact, as I verily believe, so help me God.

EDWARD J. FISHER.

STATE OF KANSAS, } ss :
Harper County, }

Subscribed and sworn to before me this 22nd day of March, 1886.

[SEAL.] F. O. MOTT,
Clerk Dist. Court.

Endorsed: No. 5285. Edward Rose *vs.* The Board of County Commissioners of Harper Co., Kans. Answer of defendant. Filed Mar. 25, 1886. A. S. Thomas, clerk, by Frank J. Thomas, deputy.

17 *Reply.*

In the Circuit Court of the United States for the District of Kansas.

EDWARD ROSE, Plaintiff,

vs.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF HARPER, STATE OF KANSAS, Defendant.

And now comes the plaintiff herein, by Rossington, Smith & Dallas, his attorneys, and for reply to the answer of said defendant says that he denies each and every allegation and averment in said answer contained.

ROSSINGTON, SMITH & DALLAS,
Plaintiff's Attorneys.

Endorsed: No. 5285. Edward Rose *vs.* The Board of County Commissioners of the County of Harper. Reply. Filed April 1, 1886. A. S. Thomas, clerk, by Frank H. Holt, deputy.

18 *Motion for Judgment on the Pleadings.*

UNITED STATES OF AMERICA, *District of Kansas:*

In the Circuit Court of the United States for the District of Kansas.

EDWARD ROSE, Plaintiff,

vs.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF HARPER AND STATE OF KANSAS, Defendant.

Now comes the defendant, by its attorneys, E. J. Fisher, Isaac A. Love, & G. W. Finch, who moves the court for judgment on the pleadings for the reason that the plaintiff has not denied under oath the answer of the defendant herein, which answer was duly verified by the defendant's attorney, E. J. Fisher.

FISHER, LOVE & FINCH,
Att'ys for Def't.

Endorsed: No. 5285. Edward Rose, plaintiff, *vs.* The Board of County Com. of Harper Co., Kansas, def't. Motion for judgment on the pleadings. Filed Dec. 15, 1886. A. S. Thomas, clerk, by Frank H. Holt, deputy. Fisher, Love & Finch, att'ys for def't.

19 UNITED STATES OF AMERICA, } *ss:*
District of Kansas, }

At a term of the circuit court of the United States of America for the district of Kansas, begun and held at the city of Topeka, in said district, on Monday, the 22nd day of November, A. D. 1886, proceedings were had and appear of record in words and figures following, to wit:

EDWARD ROSE
vs.
THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF HARPER, STATE OF KANSAS. } 5285.

THURSDAY, *Dec.* 23, 1886.

Now comes the plaintiff herein, by Rossington, Smith & Dallas, his attorneys, and the defendant, by Finch & Finch & Love, its attorneys, and to try the issues joined come a jury, to wit, Garvin Reed, N. G. Holt, John Andrews, P. Stout, W. H. Gill, M. Trahey, R. P. Merrifield, O. C. Miller, J. M. Holt, A. Fuller, S. M. Husted, Geo. C. Stoker, twelve good and lawful men of the body of the district of Kansas, who *being* duly empaneled and sworn to well and truly try the matters submitted to them in this action and a true verdict give according to the law and evidence, and thereupon the trial of this case is proceeded with, and, not being concluded at the time of adjournment, the jurors are admonished by the court as to their duties herein, and the further hearing postponed until to-morrow.

20 EDWARD ROSE, Plaintiff,
vs.
THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF HARPER, STATE OF KANSAS, Defendant. } 5285.

FRIDAY, *December 24th*, 1886.

Now come the parties herein, same as on yesterday, and, the jurors empaneled herein being called and all being present, the trial of this cause is proceeded with, and the jury, having heard the evidence, arguments of counsel, and instructions of the court, retire, under the charge of a sworn bailiff, for deliberation, and afterwards return into open court under the charge of said sworn bailiff and render their verdict herein, which is in the words and figures following, to wit:

"EDWARD ROSE
vs.
THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF HARPER, STATE OF KANSAS. } 5285.

We, the jury in said entitled action, find for the plaintiff and assess his damages against the defendant at the sum of $17,645.00.
W. H. GILL, *Foreman.*"

It is therefore now by the court here considered, ordered, and adjudged that said plaintiff have and recover of and from said defendant the sum of seventeen thousand six hundred and forty-five dollars.

21 *Motion for a New Trial.*

UNITED STATES OF AMERICA:

In the Circuit Court of the United States for the District of Kansas.

EDWARD ROSE, Plaintiff,
vs.
THE BOARD OF COUNTY COMMISSIONERS OF HARPER COUNTY, IN THE STATE OF KANSAS, Defendant.

Now comes the defendant, by its attorneys, E. J. Fisher, Isaac A. Love, & G. W. Finch, who move the court for a new trial in the above-entitled action for the reasons—

First. Because the verdict is not sustained by sufficient evidence.

Second. Because the verdict is contrary to the law and the evidence.

Third. Because of error of law occurring at the trial and duly excepted to at the time by the defendant.

Fourth. Because the court erred in permitting the plaintiff to introduce incompetent testimony over the objection of the defendant, which was by the defendant at the time excepted to.

Fifth. Because the court erred in excluding and rejecting competent and material testimony offered by the defendant, and to which ruling the defendant at the time excepted.

Sixth. Because the court erred in admitting any testimony on the part of the plaintiff to be introduced over the objection of the defendant; to which ruling the defendant at the time duly excepted.

Seventh. Because the court erred in instructing the jury to find for the plaintiff and in ordering the jury to sign a verdict without having submitted the questions of fact to said jury, which instructions were given over the objection of the defendant & to
22 which the defendant at the time duly excepted.

Eighth. Because the verdict was for the plaintiff, when under the law and the evidence it should have been for the defendant.

Wherefore the defendant prays the court to set aside the verdict herein and to grant to the defendant a new trial of this action.

E. J. FISHER,
ISAAC A. LOVE &
G. W. FINCH,
Attorneys for the Defendant, The Board of County Commissioners of Harper County, Kansas.

Endorsed: 5285. E. Rose, plaintiff, *vs.* Board of Commissioners, Harper County, Kansas. Motion for a new trial. Filed Dec. 24, 1886. A. S. Thomas, clerk, by Frank H. Holt, deputy. Fisher, Love & Finch, att'ys for def't.

23 EDWARD ROSE
vs.
THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF HARPER, STATE OF KANSAS. } 5285.

SATURDAY, *January* 15, 1887.

The defendant's motion herein for a new trial of this action came on to be heard and was argued by counsel; on consideration whereof the court doth overrule said motion; to which ruling and decision of the court the defendant now here excepts.

EDWARD ROSE, Plaintiff,
vs.
THE BOARD OF COUNTY COMMISSIONERS OF HARPER COUNTY, STATE OF KANSAS, Defendant. } 5285.

MONDAY, *January* 17, 1887.

Now comes said defendant and presents its bill of exceptions taken on the trial of this cause, and the same is allowed and signed and ordered to be placed on file with the pleadings and made a part of the record in this cause.

24 *Bill of Exceptions.*

UNITED STATES OF AMERICA:

In the Circuit Court of the United States for the District of Kansas.

EDWARD ROSE, Plaintiff, *vs.* THE BOARD OF COUNTY COMMISSIONERS OF Harper County, State of Kansas, Defendant.	General Number 5285.

Be it remembered that this cause came on for trial in the above-entitled court before a jury duly empanneled and sworn on the 23rd day of December, 1886, and the plaintiff offered in support of his petition and the issue joined therein the deposition of Francis Seiberman, to which the defendant then and there objected, for the reason, first, that the petition does not state a cause of action in favor of the plaintiff and against the defendant; second, because there is no allegation in the petition that the defendant had any existence as a corporation at the time the bonds are alleged to have been issued; which objection was overruled by the court, and to which ruling of the court the defendant then and there duly excepted.

The defendant objected further to the introduction of said deposition because there is no fact in issue in this case to which testimony might be directed; the answer of the defendant being under oath, and the reply not being under oath, entitles defendant to judgment under the pleadings under amendment of civil code procedure of 1886, which says: "In all actions allegations of the execution of written instruments, the endorsement thereon of the existence of a corporation or partnership" or any appointment or authority,
25 or the correctness of any account, duly verified by the affidavit of the party, his agent or attorney, shall be taken as true unless the denial of the same be verified by the affidavit of the party, his agent or attorney"—took effect February 13, 1886; which objection of the defendant was by the court overruled and the deposition admitted; to which ruling of the court the defendant then and there duly excepted. Clerk in making up transcript for Supreme Court will here copy in full the deposition of Francis Seiberman.

UNITED STATES OF AMERICA, *District of Kansas:*

In the Circuit Court of the United States for the Dist. of Kansas,
State of Kansas, County of Harper.

Be it remembered that on this 20th day of November, A. D. 1886, at the residence of Edward Rose, at No. 917 South Second street, in the city of St. Louis, in the State of Missouri, before me, Edward L. Carter, a notary public, duly commissioned and qualified in and for

said city, in the State aforesaid, personally appeared EDWARD ROSE and FRANCIS SEIBERMANN, of sound mind and lawful age, witnesses for the plaintiff in a civil suit now depending in the circuit court of the United States for the district of Kansas, wherein Edward Rose is plaintiff and The Board of County Commissioners of the County of Harper, State of Kansas, are defendants; and the said witnesses, being by me first carefully examined and cautioned and duly sworn to testify the truth, the whole truth, and nothing but the truth, as far as they know, did thereupon depose and say:

1 Q. State your name, occupation, age, and residence.

A. My name is Francis Seibenmann. I am a coal salesman. I am 67 years old. I reside at the southeast corner of Piedmont and Gasconade street, in the city of St. Louis, State of Missouri.

26 2 Q. How many miles is that from Topeka, Kansas, if you know?

A. I don't know the exact distance, but, at any rate, it is between 300 and 400 miles.

3 Q. Do you know Dr. Edward Rose, the plaintiff in this case?

A. I know the Dr., & have known him since 1848.

4 Q. What has been his occupation since that time?

A. A physician and surgeon.

5 Q. What was your business in the latter part of 1873, & how long did you continue in such business?

A. I was a broker, & continued the same business until 1878—a security broker.

6 Q. What is a security broker, or so, defined by you?

A. Stocks & bond broker.

7 Q. What did you do with stocks & bonds as such broker?

A. I sold them to every buyer I could find.

8 Q. Did you as such broker handle any Harper county, Kansas, bonds while you were so acting?

A. Yes, sir.

9 Q. Give a description of the Harper county, Kansas, bonds that you handled & how they were known, if you remember.

A. They were known as Harper county court-house bonds, running for 10 years, with 10% semi-annual coupons attached to them.

10 Q. What amount of bonds did you have at this time—I mean these Harper county bonds?

A. Ten thousand dollars' worth in ten bonds of one thousand each, if I remember rightly.

11 Q. What did you do with these bonds?

A. I first enquired of A. Thoman, auditor, I believe, at the

27 time the bonds were issued, if the bonds were good, & he said yes.

Mr. I. A. Love, counsel for def., objects to witness stating anything that A. Thoman said, & asks that that part of witness' answer be stricken out.

Thereupon I offered them for sale to the plaintiff, Edward Rose.

(Continuation of answer not completed above.)

12 Q. Did the plaintiff purchase them; &, if so, what did he pay for them?

Defendant objects to the first clause of question as being leading.

A. He bought them and paid 80c. on the dollar for them, cutting off the first coupon of 5% for cost, paying seventy-five hundred dollars for the ten thousand.

Defendant asks, first, that the first clause of the answer be stricken out; second, that the entire answer be stricken out, for the reason that the said first clause & entire answer is given to an improper question over defendant's objection.

13 Q. Did Dr. Rose, the plaintiff, ever obtain any bonds of the description above named from you; &, if so, under what circumstances?

A. He did receive some by purchase.

14 Q. Give the particulars of the purchase.

A. I offered him the bonds for purchase, and he did buy them.

15 Q. What did he pay for them?

A. He paid 80c. on the dollar, taking off the first 5% coupon for cash, making his cash payment eight thousand dollars, less the coupons five hundred dollars, paying me seven thousand five hundred dollars for all the ten bonds in installments. He did not get them bonds all in one lump; he got them in installments, during two weeks.

16 Q. Do you remember about the time that this transaction took place?

A. In the summer of 1874, if I am not mistaken.

17 Q. Were there any representations made by you to Dr.
28 Rose at the time you offered him the bonds for purchase?

A. Yes.

18 Q. What representations were made to him at that time touching these bonds?

Defendant objects to the question because it calls for hearsay testimony & testimony not competent to prove or disprove any issue joined in this action.

A. The representation was made upon inquiry that they were legal, being audited by Mr. A. Thoman after issue, and then auditor of the State of Kansas, who said they were good, he offering some valuable real estate for five thousand dollars of those bonds, and that is what I told or represented to Dr. Rose.

Defendant asks that the above answer be stricken out because it is incompetent to prove or disprove any issue joined in this action & is hearsay testimony.

19 Q. What were Government sixes worth at this time, if you remember?

A. I don't remember any more.

20 Q. What became of those bonds so offered to Dr. Rose?

A. I handed them over to Dr. Rose after purchase.

21 Q. How did you receive pay—in cash or in other property?

A. In cash, by checks.

22 Q. Do you remember at that time any transaction between yourself & Dr. Rose in Government bonds?

A. No, sir; the transaction I had with the Dr. in Government bonds was in 1872, by or in a purchase of Callaway county, Missouri, bonds of twenty thousand dollars.

24 Q. Who bought the twenty thousand dollars of Callaway Co., Mo., bonds & what was given for them?

29 Defendant objects to the above question because it is immaterial; also incompetent to prove or disprove any issue joined in this action.

A. Dr. E. Rose bought the $20,000 worth of Callaway Co., Mo., bonds and paid in United States five-twenties.

25 Q. Were there any Government bonds that entered into the transaction between yourself and the plaintiff at the time of the sale of the Harper county bonds to the plaintiff?

A. No, sir; none whatever; all was cash.

26 Q. Was there any transaction in Government bonds between you after the Callaway bond sale & down to the time of the transaction in Harper county bonds?

Objected to by defendant on the grounds of immateriality & incompetency.

A. No, sir; none whatever.

Cross-examined by I. A. Love, att'y for defendant:

1 Q. What business were you in in 1848?

A. I just arrived on the first of January, 1848, from Switzerland.

2 Q. Did you have any business in the year 1848?

A. I soon got a position as porter in a wholesale drug store & stayed there until we burned out in 1849.

3 Q. What business did you go into next & where?

A. I went afterward into a retail drug store and again into a wholesale drug store, as clerk, in 1850, and stayed in it until 1852.

4 Q. At what time were you a clerk in the retail drug store?

A. From 1849 to 1850.

5 Q. After the last wholesale experience, what business did you go into next, when was it, & how long did you stay in it?

30 A. In 1852 I began book-keeping & kept books in various businesses until I came to the banking business, & stayed in it until 1870, my last position being cashier in the American Bank in St. Louis.

6 Q. How many houses did you keep books for in the fourteen years that you say you acted as book-keeper?

A. Five.

7 Q. How long did you act as cashier in the bank?

A. About 3 years.

8 Q. Why did you quit that position?

A. Because the bank wound up.

9 Q. Did your conduct as cashier have anything to do with the winding up of the bank?

A. Absolutely nothing.

10 Q. When did the bank fail?

A. There was no failure; it was a voluntary winding up.

11 Q. When did the bank wind up?

A. In 1870.

12 Q. Did you have any trouble with the directors or trustees?

A. None at all; on the contrary.

13 Q. What business did you go into next?

A. Broker business.

14 Q. After that what business did you go into?

A. Selling coal.

15 Q. Have you been in that business ever since you first went into it?

A. Yes, sir.

16 Q. For whom were you acting as broker at the time you say that you sold the bonds in dispute to the plaintiff?

A. Andrew W. Mitchell.

31 17 Q. Who is he?

A. He is no more around. I could not find him any more since. I have written to Topeka to find out something about him, & asked his brother here about him; they don't know where he is.

18 Q. Who was he at the time you had the bonds & what was his business?

A. He called himself banker & broker, on the northeast corner of Third & Chestnut, under the firm of A. W. Mitchell & Co., if I remember aright.

19 Q. Did he first call your attention to the bonds in dispute?

A. Yes, sir.

20 Q. In selling the bonds to the plaintiff you advised him what to do and acted for him, did you not?

A. I advised him not. I simply recommended the bonds, as the information about the bonds was good.

21 Q. Did you act for him in the purchase?

A. I only brought the bonds and received pay.

22 Q. Is it not a fact that the Dr. advised with you about the purchase of them?

A. He asked me whether I thought they were good and thought I would not sell him anything bad. I could not advise to the contrary, as the information came from a real friend of mine, Mr. A. Thoman, the former auditor of the State of Kansas.

23 Q. Is it not a fact that the plaintiff said to you, Siebermann, I don't know about these bonds, but if you think they are all right & a good investment you get them for me; I rely upon your judgment and experience in such matters; or words to that effect?

A. My answer to this question is given in the above answer to the former question.

24 Q. Is the answer that you have given the only answer
32 that you can make or will make to the last preceding question?

A. I cannot give you a more explicit answer than the answer in my second preceding answer. It is positively full and explicit.

25 Q. How do you know it is?

A. Because it was short and to the point.

26 Q. How do you know it is to the point?

A. It goes to the facts; it states the facts in full.

27 Q. Do you mean to say on your oath that the answer you have referred to states every fact connected with the subject mentioned in that answer?

Objected to by pl'ff's att'y because it is simply a criticism on language that the counsel is seeking to make.

A. Positively so.

28 Q. In that conversation did you not tell him that they were court-house bonds for 10 years, with 10% semi-annual interest, with coupons attached?

A. I brought one bond for his examination here into his office; showed him the execution & signatures necessary to make the bonds valuable & lawful.

Defendant asks the answer to be stricken out as not responsive to the question.

29 Q. Question repeated.

A. I do not remember that. I only remember that I brought him a bond to show it.

30 Q. Did you at the time you brought the bond tell him that the county was duly organized?

A. I do not remember that I have said that in such words?

31 Q. Did you say that in effect?

Objected to by pl'ff's att'y as being incompetent & leading
33 to a conclusion of the witness as to the idea conveyed. The proper question should be, What was said, if you remember?

A. I do not remember. It is 12 years since the transaction, & by the best of my will I could not remember the words which were spoken. The subject is explained in my answer above.

32 Q. Did you talk with him on the subject of the organization of the county?

A. I remember only one time, long afterwards, speaking in the presence of the doctor to Mr. Thoman about it at his saloon and he reported again that the county was properly organized when he signed the bonds as auditor; otherwise he would not have signed them.

At this stage of the examination an adjournment was taken, by consent of all the parties present, until after dinner, deposition to be continued at half past 3 o'clock at the same place.

[SEAL.] EDWARD L. CARTER,
Notary Public.

Pursuant to adjournment, as above stated, I now continue the taking of depositions in the above-entitled cause at the same place and at the time last above mentioned.

Cross-examination continued:

33 Q. What did Andrew W. Mitchell tell you about the bonds?

Objected to by pl'ff's att'y as being incompetent, irrelevant, & calling for hearsay testimony.

A. He recommended them as good, of course.

34 Q. Is it not a fact that he told you the bonds were no good and fraudulently issued, but if you could find some purchaser for them you could have one-half of the sale for your commission, or words to that effect?

A. There is absolutely not a syllable of it so; there is abso-
34 lutely not a syllable of it true. On the contrary, he recommended them to me as good, knowing that I would not sell or propose to sell anything that was dubious or doubtful.

35 Q. How do you know that he knew that?

A. Because I told him that I would have nothing to do with securities where there was any risk in it.

36 Q. When did you tell him that?

A. At his first proposition to me that I should sell them.

37 Q. Why did you tell him that?

A. Because I did not know anything of the obligations.

38 Q. What caused you to be suspicious of them?

Objected to by pl'ff's att'y because it assumes matter which has not been testified to by the witness.

A. Perfect ignorance of their existence.

39 Q. How long were they in your hands before you perfected their sale?

A. I do not remember exactly.

40 Q. State as near as you can.

A. I only had one in my hands and showed it to Thoman. After having received his opinion about it, his opinion being good, I showed it to *the* Doctor Rose & I offered the bonds to him for sale.

42 Q. From the time they were first drawn to your attention to the time they were offered to the plaintiff about what time elapsed or passed?

A. If I am not mistaken it was about 14 days or a month; somewhere about that time.

43 Q. Did you offer them to any other person than the plaintiff?

A. No, sir; to nobody.

44 Q. Is it not a fact that at the time the plaintiff purchased the bonds in dispute & the Caliway county bonds you were act-
35 ing as the agent & adviser of the plaintiff in matters of that kind?

Pl'ff's att'y objects to that portion of the question which refers to the bonds in dispute, for the reason that the witness has been inter-

rogated before as to his agency concerning the sale of the bonds in dispute.

A. No; not exactly. When the doctor bought the Caliway county bonds he enquired first of the 1st National Bank, the president thereof telling him they were good, & he bought them. After that, generally, the doctor took my advice or acted on the information I gave him.

45 Q. His business being that of a doctor and yours that of a broker, for his brokerage business he depended on you largely?

A. Not always; but in some instances he took my advice and information, knowing that I would not tell him an untruth.

46 Q. How did he know that?

A. Because of old acquaintances finding me always in respectable business & trusty position.

47 Q. What did you make out of the sale or purchase of the bonds in suit.

A. A reasonable commission only. I don't remember any more. The percentage; it was generally about 2 or 2½ per. cent. in such cases.

48 Q. Is it not a fact that you got a much larger commission in this case than 2½ per cent.?

A. No, sir; but I don't remember the exact figures.

49 Q. Did the plaintiff know the amount of commission you were receiving?

A. As a matter of course he did not.

50 Q. What did he pay you for your trouble?

A. He did not pay me anything. I made the commission out of the other end.

36 51 Q. Was he aware at the time that you were making commissions from the other parties in this transaction?

A. I suppose everybody should know that transactions of that kind should pay something, and, consequently, he must have imagined that I made some profit out of it or else I would not have done it.

52 Q. Question repeated to witness.

A. He did not ask me, nor did I tell him so. I did not know whether he knew it or not.

53 Q. How large was the first installment that you sold him?

A. I don't remember exactly, but I think it was five thousand dollars.

54 Q. How large was the next installment that you got for him?

A. I don't remember any more whether it was three thousand or five thousand. I believe I delivered them in three lots, but don't remember.

55 Q. How large was the third installment?

A. I don't remember that any more—whether 2 or three thousand.

56 Q. How far apart was these separate deliveries, about?

A. It may have been one or two weeks; can't say positively.

57 Q. Please think a moment and give your best recollection as to the month that these transactions occurred in.

A. I believe it was in May or June, but I don't remember exactly any more.

58 Q. Have you any way by which you could fix that date?

A. I have not.

59 Q. You say the doctor paid you in checks. In whose favor were they drawn & on what bank?

A. They were drawn in my favor, but I don't remember any more the bank he checked on. I suppose it was the then First National Bank.

60 Q. How large, as near as you can state, was the first check he gave you?

37 A. I don't remember any more.

61 Q. How large was the second and third checks that he gave you—about how large?

A. I don't know—that is, I don't remember. It depended upon the statement of bonds that he got.

62 Q. At the time he purchased the twenty thousand of Caliway county bonds how much did he turn over in five-twenty U. S. bonds?

A. I don't remember any more how many of the five-twenties he turned over. They were worth then about one hundred and twenty, and the balance was made up in cash.

63 Q. What was the value of county bonds of the State of Kansas in this market in 1874—summer?

A. The value of county bonds varied from sixty-five to eighty-five or ninety, in proportion of the interest they were bearing and the time they had to run. Short or ten per cent. bonds were highest.

64 Q. What per cent. is 75 hundred dollars of ten thousand five hundred dollars?

A. It is thirty-three per cent. A quarter off is thirty-three per cent.; or, if you add a quarter to three-quarters, it is thirty-three per cent.

65 Q. Why, then, do you say that the plaintiff paid eighty per cent. of the bonds in suit?

A. The paying eighty cents, deducting five per cent. for undue current coupons, they not being due for three months, leaves seventy-five cents on the dollar.

66 Q. The coupons you speak of not being due for 3 months were the second set of coupons, were they not?

A. I don't remember exactly, but I believe so.

67 Q. To refresh your memory, is it not a fact that the de-

38 duction of five hundred dollars was for the first set of over-due coupons?

A. The deduction was not. It was for an undue coupon. They offered that to induce the sale.

68 Q. But for the coupons that were due there was no deduction made; is that so?

A. They were not on the bonds. They were cut off & not with the bonds when I got them.

69 Q. Why do you designate June as the month in which this occurred? Have you any particular reason?

A. Simply I am not certain whether it was May, June, or July.

Redirect examination by Mr. PEACOCK, plaintiff's att'y:

1 Q. In your cross-examination you spoke about advising the plaintiff in the matter of brokerage. What do you mean by advising plaintiff?

A. I don't propose to say advising. Simply my business was to state the circumstances of the obligations—if they were legal, legally issued, had any appearance of fraud upon their face, or any other signs that defalcation could follow.

Recross-examination by Mr. LOVE, def's att'y:

1 Q. Why did you go to A. Thoman to advise with him about the bonds?

A. Because of his signature on the bond as auditor of the State of Kansas. I thought that he must be acquainted with them if anybody could be—with the circumstances of those bonds.

2 Q. Are you sure that you saw A. Thoman's name and signature on the bonds in dispute in this action at the time you say you went to see him about them before you offered them for sale?

A. I am sure and positive about it or else I would not have enquired of him about it.

The witness desires to make the following statement:

39 It was stated in a former part of this deposition that the bonds were thousand-dollar bonds. I am not certain whether the bonds were five hundred or thousand dollar bonds.

F. SIEBERMAN.

Subscribed and sworn to before me on this 22 day of November, A. D. 1886.

[SEAL.] EDWARD L. CARTER,
Notary Public.

Not being able to complete the taking of depositions in the above-entitled cause on this the 20th day of November, 1886, between the hours prescribed, an adjournment was taken to November the 22nd (to-morrow being Sunday), at half past 9 o'clock, then to be continued at the same place.

[SEAL.] EDWARD L. CARTER,
Notary Public.

The plaintiff then offered in evidence the deposition of Edward Rose, the plaintiff in this action, to the reading of which deposition the defendant, by its counsel, then and there duly objected because no testimony could properly be admitted under the pleadings. Objection was overruled by the court and the deposition read in evidence; to which ruling of the court the defendant then and there, by counsel, duly excepted.

Clerk, in making up transcript for Supreme Court, will here copy in full said deposition.

Pursuant to adjournment, as above stated, I now continue the taking of depositions in the above-entitled cause at the same place and at the time last above mentioned.

Doctor EDWARD ROSE, the plaintiff, having been duly cautioned and sworn, deposeth & saith:

1 Q. Doctor, state your name, age, residence, and occupation.

40 A. Name, Doctor Edward Rose; age, 78 years; residence, 917 South Second street, city of St. Louis, State of Missouri; occupation, a physician.

2 Q. How long have you resided in St. Louis?

A. Ever since 1839—about 46 years.

3 Q. Did you ever own any bonds purporting to have been issued by the county of Harper, State of Kansas?

A. Yes, sir.

4 Q. When & from whom did you get them?

A. I believe about 1873, and from Francis Siebermann.

5 Q. What was Mr. Siebermann's occupation at that time?

A. A Broker. He was in the broker business.

6 Q. How & under what circumstances did you get these bonds from Mr. Siebermann?

A. He recommended these bonds as the best papers in the United States.

7 Q. Then what did you do?

A. I bought them.

8 Q. Do you remember the amount of each bond & how many there were?

A. They were bonds for $500 each & there were twenty bonds.

9 Q. Were there anything attached to the bonds?

A. Yes; coupons.

10 Q. When you received the bonds were there any coupons cut off?

A. Yes, sir; from each one—one.

11 Q. Do you remember the number of those bonds?

A. Yes, sir; they were from one to ten & from thirty-one to forty.

12 Q. What were they known as—what kind of bonds?

A. Harper county bonds.

13 Q. For what purpose were they issued, if you know?

A. For a court-house or something; I am not sure.

41 14 Q. What did you pay for these bonds?

A. I don't know any more; maybe 80 or 85c., not over 90.

15 Q. You have invested in a good many bonds in your time, have you not?

Objected to by deff's att'y as being leading, immaterial, & incompetent.

A. Yes.

16 Q. What became of these Harper Co. bonds that you got from Mr. Siebermann?

A. Nothing—not five cents.

17 Q. What did you do with the bonds?

A. I gave them to Mr. Peacock to collect after they were due.

18 Q. Have you ever received any money whatever, either on the bonds or from the coupons?

A. Not five cents.

19 Q. At the time you bought the bonds had you any knowledge of them or concerning them except what you obtained from Mr. Siebermann?

A. Nothing before.

20 Q. At the time of the purchase did you know anything from any other source?

A. Mr. Siebermann brought me some recommendation or writing. I mean to say no in answer to the question.

21 Q. What is your condition of health at the present time?

A. Not so very good.

22 Q. Are you ill, sick, or well?

A. I am not well.

23 Q. How long have you been in this condition?

A. About six weeks.

24 Q. How is your mind; is it clear?

Question objected to as leading by def's att'y.

42 A. If you feel sick you feel always not right.

25 Q. Is your mind clear?

Objected to as leading by def's att'y.

A. Oh, yes.

Cross-examined by Mr. LOVE, counsel for defendant:

1 Q. How is your memory—good or bad?

A. For my age it is good enough.

2 Q. In the year 1873 what other bonds did you buy?

A. I don't remember no more.

3 Q. In the year 1874 what other bonds did you buy?

A. I don't remember no more; it may be Caliway or some other bonds. I don't remember no more.

4 Q. When, after 1874, did you buy the next lot of bonds?

A. I don't remember any more; if you let me see the bonds I can tell you.

5 Q. State as near as you can the aggregate amount of bonds you have purchased since 1870.

A. I don't know.

6 Q. State as near as you can the aggregate amount of bonds which you purchased before 1870?

A. I don't know. I own U. S. bonds to the amount of about twenty thousand dollars, more or less.

7 Q. Name as near as you can all the different kinds of bonds which you have purchased.

A. I don't remember any more.

8 Q. Name as many of them as you can.

A. If I could see my book I could tell. I remember Caliway, Cape Girardeau, some U. S. bonds, small U. S. bonds, and more, but I don't know any more.

43 9 Q. What was the amount of the Cape Girardeau bonds?

A. I don't know any more. If I can see I can tell.

10 Q. What year did you buy them in?

A. I don't know.

11 Q. Now, Doctor, have you had any conversation with your attorney this morning on the question of your testimony?

A. No.

12 Q. Did you have on Saturday last on that question and about Mr. Siebermann's testimony?

A. No.

13 Q. How do you remember that one coupon was cut off of each bond?

A. I bought it so.

14 Q. How many coupons were attached to the bonds that you say you turned over to Mr. Peacock?

A. Nineteen on each bond; some were cut off of one or two. I sent them there for collection.

20 Q. Do you mean to say that it was some of the 19 coupons that were cut off & sent for collection?

A. Yes; it was some of the 19.

21 Q. Were any of the 19 collected?

A. Not a single one.

22 Q. Is it not a fact that you received pay for the first coupons?

A. I don't recollect about the first of the 20. If I received anything it was in payment for the bonds to Mr. Siebermann.

23 Q. Did I ever take your examination in this action in behalf of the defendant?

A. I don't know; I believe once before.

24 Q. If so, when was that?

A. I don't know any more—how many months.

44 25 Q. Do you remember what you testified at that examination?

A. No; I was not sick at that time. I am now sick.

26 Q. And your sickness affects your memory, does it not?

A. A little.

27 Q. Do you think your memory is as good now as when I examined you before?

A. I was not sick then, and my memory is not so good as if I was not sick.

28 Q. If your testimony given at your former examination on the part of the defendant & the testimony from to-day do not agree or dispute each other, which is more likely to be correct or true?

Objected to by pl'f's att'y as calling for an inference on the part of the witness which, from the nature of his testimony, he is unable to draw, he having testified herein that he does not remember what he testified to on the former occasion.

A. I don't know no more.

29 Q. That is, you mean to say that you don't know which is correct or true?

Objected to by def's att'y as having a tendency to mislead the witness.

A. I don't know no more. I believe both are right.

30 Q. If you said in your former examination that you received pay for the first coupon through the International Bank, and you now say in this examination that you did not receive such payment, which of the two statements is correct?

A. I don't know no more.

31 Q. Do you mean to say that you don't know which of the two statements is correct, if they were made as above?

A. I don't recollect any more.

45 The last question was objected to by Mr. Peacock for being misleading & because it assumes a fact not in evidence.

32 Q. Did you state in your former examination in this action that you had been paid the interest for one set of coupons, and that you received it through the International Bank of this city, who collected it for you through the National Park Bank of the city of New York, or words to that effect?

A. Never five cents. The first coupons, I believe, I did not get. I think Mr. Siebermann took them in payment on the bonds when I bought them. I sent the second coupons through the International Bank to New York, & they came back in this envelope hereto attached and marked Exhibit A.

Exhibit handed to notary & hereto attached.

I mean the coupons come back, but no money.

The defendant asks that the question be stricken out as not being responsive to the question and asks that the question be repeated to the witness.

Question repeated as above.

A. I don't remember what I said on that occasion. I never received five cents on the bonds or the coupons or anything; it may be that it was paid & it may be not; it may be that the first coupon went to the payment of Mr. Siebermann or it may be not.

33 Q. Were the first coupons due when you purchased the bonds?

A. I don't believe—I don't know.

34 Q. In what month did you purchase them?

A. I don't recollect.

35 Q. In what year?

A. It may be in 1873 or 1874 or something.

46 36 Q. In what year was it that I took your examination in behalf of the defendant in this action?

A. I really don't know; Mr. Peacock knows it.

37 Q. How do you know that the first coupons were cut off when you got the bonds?

A. They were not on; they were on 19.

38 Q. Why can you remember that the first coupons were cut off when you got the bonds when you cannot remember when you got them nor anything that you said on your former examination?

A. The first coupons were not on. I don't recollect that the first coupons were on, & I believe that Mr. Siebermann took them in settlement for the bonds.

39 Q. If the first coupons were not on how could Siebermann take them for pay?

A. He takes them before he sells to me; cuts them off before they were delivered to me; that is my belief.

40 Q. Did you see him cut them off?

A. No.

41 Q. Did you ever see the first coupons?

A. I don't know; maybe & it may be not.

42 Q. What did Siebermann say to you about the first coupons?

A. I don't know what he said; it is a long time. I heard that the first set was paid, & then I sent the second in the envelope you have.

43 Q. As a matter of fact you have no personal knowledge as to what the bonds in suit were issued for, have you?

A. I was not there. I was never there; no more than what was stated in the bonds.

44 Q. State how much in cash you paid for the bonds.

A. I paid it all in cash. I gave a check on bank, which
47 was as good as cash. I don't know how much. I pay for all my bonds in cash.

45 Q. Did you state on your former examination that you had paid for these bonds mostly in U. S. bonds, or that in substance?

A. I don't remember any more.

46 Q. If you did so state, which statement is correct?

A. I don't know. I did buy some bonds of Denison City, Tex., and I exchanged U. S. bonds for some bonds, but don't know whether it was for these or Harper county bonds.

Redirect examination by Mr. PEACOCK, att'y for plaintiff:

1 Q. Where were you born?

A. In the Kingdom of Hanover, Europe.

2 Q. When did you arrive in this country?

A. It was about January or February, 1839 or 1840.

3 Q. Do you keep a record of your purchases in book for the sales & purchases of bonds?

Defendant's att'y objects to the last two questions on the grounds of immateriality & incompetency.

A. No.

4 Q. Have you any writing or paper on which the purchase & sales of bonds are written?

Objected to by defendant's att'y as being incompetent and immaterial.

A. No.

5 Q. Have you any writing made by you which refers to the purchase of the Harper county bonds?

Objected to by def's att'y as immaterial and incompetent.

A. I don't know.

6 Q. Have you the checks, if any, which were given for the purchase of the Harper county bonds?

48 A. It may be that I have; it may be not.

7 Q. Could you tell, if checks were given, upon what bank they were given?

A. No.

8 Q. Could you remember any bank upon which you checked?

A. It may be the International Bank or it may be the Iron Mountain Bank or some other bank.

By agreement the latter part of this examination was taken as a part of the examination-in-chief, and the following question are to be considered as a part of the cross-examination:

Cross-examination continued by Mr. LOVE:

1 Q. At the time you purchased the bonds in dispute had you any personal knowledge that there existed such a thing or corporation as Harper county, Kansas?

A. I "don't" "know," only what Mr. Siebermann told me, & he took me up to Mr. Thoman's and Mr. Thoman told me that the county was good in the presence of Mr. Siebermann. Mr. Thoman told me that at the present time they would not or could not pay, but in course of time the bonds were good.

Defendant now asks that all of the answer following the words I "don't know," at the beginning of the sentence, be stricken out, because it is not responsive to the question, is voluntary upon the part of the witness, and is hearsay testimony and incompetent.

2 Q. Had you any personal knowledge as to whether the chairman of the board of county commissioners & the clerk of the county as shown on the alleged bonds really and lawfully held such offices?

Objected to by pl'ff's att'y as calling for a legal opinion on the part of the witness.

A. I knew nothing about it except what appeared on the bonds.

49 3 Q. Had you any personal knowledge that the alleged chairman and clerk had ever existed at or before you purchased the bonds?

A. I know nothing, except what was on the bonds.

DR. EDWARD ROSE.

Subscribed and sworn to before me on this the 22nd day of November, A. D. 1886.

[SEAL.] EDWARD L. CARTER,
Notary Public.

The plaintiff then produced W. T. Cavanaugh in person, who, being duly sworn, testified as follows:

Clerk will here copy in full the testimony of W. T. Cavanaugh, including all the papers which were by him produced, identified, and introduced in evidence, being the petition to the Governor and the proclamation of the Governor regarding the organization of Harper county, Kansas; clerk will do this in making up transcript for Supreme Court.

50 W. T. CAVANAUGH, a witness for the plaintiff, being first duly sworn, testified as follows:

Direct examination—questions by Mr. SMITH:

Q. Where do you live?
A. Topeka, Kansas.
Q. What is your official position?
A. I am assistant secretary of state.
Q. Of what?
A. Of Kansas.
Q. As such assistant secretary of state did you or do you not have charge of the papers and records of that office?
A. Yes, sir; I have. I have, by the fact that I am assistant secretary of state. I have charge of such papers.
Q. Have you the records of the original organization of Harper county?
A. I have: yes, sir.
Q. And the proclamation of the Governor?
A. Yes, sir; the proclamation of the Governor. I have all the original papers.
Q. Will you produce them?
A. Yes, sir. (Witness produces said papers.)
Q. Are these records on file in your office?
A. They are; yes, sir; they are part of the files of that office.
Q. I will ask you whether or not prior to the year 1885 the law did not require all acts of the Governor to be deposited in your office?

Objected to by defendant; overruled and exception saved.

A. Yes, sir.

51 STATE OF KANSAS:

OFFICE OF SECRETARY OF STATE.

I, E. B. Allen, secretary of state of the State of Kansas, do hereby certify that the following and annexed is a true and correct copy of the original instruments of writing filed in my office August 20th, 1873.

In testimony whereof I have hereunto subscribed my name and affixed my official seal.

Done at Topeka, Kansas, this 1st day of October, 1887.

[Seal Secretary of State, State of Kansas.]

E. B. ALLEN,
Secretary of State,
By W. T. CAVANAUGH,
Ass't Sec'y of State.

52 To the Hon. Thomas Osborn, Gov. of the State of Kansas:

We, the undersigned, citizens, householders, and legal electors of the county of Harper, State of Kansas, humbly petition your honor:

Whereas the said county of Harper, in said State, is at this time unorganized and has a population of six hundred inhabitants, we, therefore, humbly pray that said county may be organized; that John Davis, who is a *bona fide* resident of said county, may be appointed to take the census and ascertain the number of *bona fide* inhabitants of said county.

And that Hon. N. H. Weaver, H. P. Fields, and Samuel Smith be appointed to act as county commissioners and the Honorable Daniel Holson be appointed to act as county clerk.

Whereas the city of Bluff City is centrally located in the county, and being the largest and most imporfant business point in the county, with good water & timber, we humbly pray your honor that it may be designated the temporary county seat of said county.

Your petitioners will ever pray, &c.

JOHN SMITH.
DAVID SMITH.
W. MORRIS.
T. I. JONES.
MICH. THORSON.
52½ J. D. MIMS.
WM. H. HORNOR.
ABRAHAM HOWARD.
I. G. HOW.
H. P. FIELD.
R. E. WHITE.
P. H. WILLIAMS.
N. W. WEAVER.
JOHN ADAM.
R. S. NIXON.
J. D. WAGNER.
CHRIS. INGLE.
L. L. LAUGHLIN.
B. P. HAYNES.
T. T. WIGANT.
W. S. RIDER.
H. DUGAN.
J. P. WINTHROP.
D. HIGGINS.

G. ADAMS.
Z. A. BUTLER.
W. P. MADDOX.
A. V. AUKMAN.
D. L. BEESLEY.
PAT. DELANY.
MARTIN JOICE.
THOMAS DELANY.
F. W. COBB.
F. LOWERY.
JOHN LEWELLING.
IKE DAVIS.
S. S. BILLINGSLEY.
I. B. WHEATLEY.
PERRY JAMES.
N. HODGDEN.
BOB HEARY.
N. T. FOX.
E. PHELPHS.
H. W. JOHNSON.
A. ANDERSON.
M. MURTIN.
WILLIAM YOUNG.
N. LOVEJOY.

THE STATE OF KANSAS, *Sedgwick County:*

T. I. Jones, J. D. Mims, & J. G. How, being first duly sworn according to law, on their oath say that they are each legal electors and householders of the county of Harper, in the State of Kansas; that the signatures to the foregoing petition are the genuine signatures of the parties whose names are signed to the foregoing petition, and said signers are *bona fide* householders of the county of Harper, in said State of Kansas; that the affiants have reason to and do believe that there are six hundred inhabitants in said county of Harper, as stated in said petition.

53

T. I. JONES.
J. D. MIMS.
J. G. HOW.

Sworn to before me and subscribed in my presence July 17, 1873.

[SEAL.] JAMES McCULLOUGH,
Notary Public.

54 & 55 *Proclamation.*

Whereas a memorial signed by forty householders, residents of Harper county, Kansas, and legal electors of the State, whose signatures have been duly attested by the affidavits of three householders thereof, showing that said county had six hundred inhabitants, and praying for the organization of the same, said affiants setting forth that they had reason to and did believe said memoria-; and.

Whereas it appears from actual enumeration by census returns, duly made and certified according to law by an officer regularly commissioned and qualified, that there are six hundred *bona fide* inhabitants in said county of Harper:

Now, therefore, know ye that I, Thomas A. Osborn, Governor of the State of Kansas, by authority vested in me, have appointed and commissioned N. H. Weaver, H. P. Fields, and Samuel Smith special county commissioners, and Daniel Holson special county clerk, for Harper county, Kansas, who were the persons recommended for said offices in said memorial, and do hereby declare Bluff City the temporary county seat for said county.

In testimony whereof I have hereunto subscribed my name and caused to be affixed the great seal of the State.

Done at Topeka, Kansas, this twentieth day of August, 1873.

[SEAL.] THOMAS A. OSBORN.

By the Governor:
W. U. SMALLWOOD,
Secretary of State.

56 THE STATE OF KANSAS, } ss:
Sedgwick County, }

I, John Davis, do solemnly swear that I will faithfully discharge the duties of census-taker in and for the county of Harper, State aforesaid, according to law.

JOHN DAVIS.

Sworn to before me & subscribed July 21st, 1873.

[SEAL.] CHARLES HATTON,
Notary Public.

Names.	Age.	Names.	Age.
Russell, Jas. P.	50	Compton, Peter T.	32
Russell, Zera	47	Compton, Mary I.	25
Russell, James	42	Compton, Hattie	10
Russell, Hiram	32	Compton, Bell E.	2
Russell, Wm. B.	27	Streat, James H.	54
Woodhall, Lem'l G.	25	Streat, Hellen P.	45
Woodhall, Vina I.	19	Streat, William H.	20
Little, H. H.	54	Streat, Mary I.	16
Little, Myra	54	Streat, Oscar H.	10
Little, Frank J.	30	Streat, Clod.	5
Little, Bill E.	29	Miller, James H.	39
Little, Fannie	22	Miller, Mattie E.	30
Little, George F.	18	Miller, Frank I.	20
Elless, Gilbert	60	Miller, Matilda	16
Elles, Frank A.	30	Mason, James	31
Ellis, Ruben F.	27	Fuller, Eben I.	41

Names.	Age.	Names.	Age.
Elles, Harley T.	22	Fuller, Eveline	36
Woodman, John J.	54	Fuller, Frank I.	21
Woodman, Mary	50	Fuller, Horace	19
56½ Woodman, Jane E.	31	Fuller, Fred. A.	15
Woodman, Hattie	19	Fuller, Hensie	10
Woodman, Chas. S.	16	Benson, Charles G.	47
Sartle, John P.	47	Benson, Eveline	40
Sartle, Mary J.	40	Benson, Hannah	20
Sartle, Wm. H.	19	Benson, Mary	15
Sartle, Sarah E.	15	Bennett, Hiram	29
Sartle, Fred. H.	13	Jacobs, Wm. H.	21
Sartle, Benj. P.	10	Williams, Wathan P.	21
Smith, Sam'l	31	James, Wm.	13
Hawes, Hiram P.	39	Johnson, Ezrie	5
Dunlathey, James	20	Field, Fred. D.	19
Carber, Wm. B	15	Jones, Jas. P.	23
John, Davis W.	32	Shourn, Mich. H.	25
Dobbs, Henrie	19	Manson, Wm.	20
Asted, George F.	15	Doolittle, John F.	37
Johnson, L. P.	10	Doolittle, Mary I.	30
Homes, Mary	20	Doolittle, Jennie	10
Johnson, Elisha	15	Doolittle, Mattie	3
James, John	12	Doolittle, Eva	1
Smith, John	35	Minas, James D.	35
Danils, Wm. H.	17	Fossett, Sam'l S.	39
Hobson, Daniel	37	Fossett, Katherine	32
Hobson, Rebecca	30	Fossett, Jane E.	10
Hobson, Mary	15	Fossett, Rob't T.	5
Hobson, Jane	7	Fossett, John G.	2
Redy, James P.	17	Williams, Peter	16
Ramsey, B.	20	Hamar, Wm. H.	33
Smith, David	23	Applebeeb, Hiram F.	9
Davis, James H.	15	Spurgeon, Rob't	19
Davis, William	21	Spencer, Henry	7
Davis, Henrie	16	Eastman, W. H.	72
57 More, Wm.	30	Eastman John	20
More, Jennie	25	Bean, Fred. N.	17
More, Susan	10	Bean, Horace E.	14
More, Bettie	7	Jacobs, Noey	21
More, Frank	1	Robins, John	5
Lund, S. Chas.	27	Nevens, John D.	5
Lund, Emma	24	Stevens, Daniel	17
Lund, Frank F.	9	Stoughton, Laura	9
Lund, Eveh I.	2	Stoughton, Hannah	3
Howard, Abraham	25	Hanes, Bradley P.	29
How, Isaac G.	23	Wygant, Ira F.	40
Graves, Daniel T.	15	Redden, Wm. S.	29

Names.	Age.	Names.	Age.
Graves, Wm.	17	Fisher, Sam'l	17
B. E. White	28	Verbelo, Isaac	23
Folsom, Henrie	37	Verbelo, Roxana	20
Folsom, Huldah	33	Verbelo, Ellen	7
Folsom, Clara	10	Verbelo, Esther	1
Folsom, Hannah	5	Adams, George	35
Folsom, Pheby	2	Bodkins, Wm.	7
Pierce, Horace	1	Brown, Frank	17
Williams, P. H.	25	Brown, Chas.	22
Adois, John P.	42	Chamberlin, Right	20
Rice, Wm.	23	Chamberlin, Asher	18
Rice, James	20	Zelikin, Neoroze	23
Rice, Daniel	7	Boothe, Zara	41
Nixon, Rogers	23	Paddleford, Benj. B.	54
Inginsall, Jane	15	Paddleford, Anna	41
Wagins, I. D.	29	Paddleford, Horace	15
Night, Chas.	42	Paddleford, Fred. A.	10
Wright, James	15	Paddleford, Eva	3
Wright, Fannie	7	Bradford, Silas	17
Wright, Louis	5	Maddox, Benj. P.	41
57½ Wright, Tomie	2	Childs, Ezra	29
Ankion, Amos	39	Chisum, John	41
Brush, Geo.	29	Chisum, Catherine	12
Brush, Stephen	43	Chisum, Huldy	35
Brush, Susan	35	Chisum, Louis	5
Brush, Susan	5	Chisum, George	1
Chanfraugh, Wm.	17	Lea, Isaac	24
Chambers, Mattie	12	Lea, Susan	20
Dauken, Nellie	14	Lea, Syntha	1
Buck, Lafe	29	Chamberlin, Timothy	20
Buck, Chesta	27	House, George F.	35
Buck, George	5	House, Francese	30
Buck, Kittie	2	House, Eben	13
Stebens, Nora	23	House, Silas	9
Stebens, Mose	21	House, Ella	3
Whitcher, Eben	32	Wiggins, John	31
Whitcher, Helen	32	Wiggins, Elisha	22
Whitcher, Ruth	16	Webb, Chas.	31
Whitcher, Ezra	5	Willard, Henry	14
Shockley, Wm.	9	True, Joshua	29
Nye, Horatio	31	True, Samantha	28
Nye, Susan	30	True, Wm.	5
Louis, Geo. W.	19	True, James	2
Louis, Wm.	15	Martin, Jonas	31
Louis, Henry	12	House, Zeb.	19
Busby, Dan'l L.	25	Delong, Thomas	22

Names.	Age.	Names.	Age.
Delaney, Pat.	29	Hameron, Amos	17
Delaney, Mag	23	Hamor, James	21
Delaney, Mike	5	Hamor, Eva	15
G. P. Hunt	55	Samuel Dexter	42
Mary Hunt	50	Betty Dexter	42
Jane Hunt	18	Henrie Dexter	20
58 Eva Hunt	10	Wm. Dexter	17
Nellie Hunt	4	Hellen Dexter	10
Wm. Billings	40	Betty Dexter	2
Susan Billings	32	James Hanes	19
Rebecca Billings	2	Albert Boggs	29
Amos Cobb	42	George Fletcher	40
Lucy Cobb	40	Ezra Fletcher	35
Lewis Cobb	20	Elisha White	60
Wm. F. Cobb	18	Laura White	58
Fred. Cobb	13	Anna White	27
Elisha Cobb	8	Mary White	23
Jane Cobb	5	Homer White	20
Lizzie Cobb	1	James White	17
James Buswell	57	Fred. White	14
Clara Buswell	44	Harry White	10
Joel Buswell	50	J. McNeal	40
Hannah Buswell	31	Catherine McNeal	39
Betty Buswell	5	Wm. Brown	25
Henry Ramsey	30	Charles Brown	20
Hannah Ramsey	25	Sam'l Ainsworth	21
Susie Ramsey	3	James Ainsworth	28
Chas. Pierce	37	Christopher Smith	40
Susan Pierce	35	Charles Hanes	29
Julia Pierce	16	Henry Carter	31
Ellen Pierce	10	Horace P. Field	32
Smith, Jas.	42	Ollie, Olston	29
Eaton, Cyrus	60	Ollie, Q.	31
Eaton, Chas.	42	Scmit, Charles	23
Holman, Wm.	30	Dunlap, Benj.	42
Holman, Susan	25	Dunlap, Susan	40
Wiggins, Reubin	50	Dunlap, Wm.	18
Wiggins, Hannah	45	Dunlap, George	15
58½ Wiggins, Jas.	20	Dunlap, Mary	10
Wiggins, Hiram	18	Dunlap, Hattie	7
Schmidt, Wm.	58	Bates, Henry	50
Schmidt, Anna	50	Bates, Susan	42
George, Sam.	22	Bates, Christopher	22
George, Ebin	26	Bates, Fredrick	17
Harvey, Chas.	22	Bates, William	14
Barnes, Frank	28	Bemas, Hiram	32

Names.	Age.	Names.	Age.
Barnes, George	33	Cate, Henry	40
Barnes, Amos	17	Cate, Reuben	32
Williams, Bill	50	Carpenter, Charles	27
Williams, Julia	45	Carpenter, John	41
Williams, Susan	22	Carpenter, Wm.	37
Williams, Amos	30	Metz, George	31
Cosgro, Jane	40	Metz, Wm.	22
Ames, Eliza	35	Ream, Lewis	60
Jones, Horace	50	Ream, Catherine	54
Jones, Elisha	42	Ream, George	20
Jones, Mary	40	Ream, Mary	15
Jones, Hannah	32	Ream, Beckey	10
Jones, Anga	18	Ream, Philip	4
Sutherland, James	22	Childs, Wm.	16
Park, Jefferson	13	Wallace, John T.	21
Brock, Rob't	29	Hanley, John T.	35
Hammon, Rob't	16	Hanley, Susan	30
Hensley, Wm. H.	21	Hanley, Betsey	1
Read, John G.	35	Kandel, David	26
Dinton, Wm.	16	Taylor, Chas. M.	15
Williams, John	42	Blair, Fred.	3
Rendskoff, John	19	Hill, Daniel	17
Schnider, Peter	26	Hill, Ambrose	29
Fisher, Emma	16	Harrold, Sam'l	19
59 Hansen, Hanes	22	Brown, Geo. W.	23
Doffo, Chas.	52	Foster, Unice	3
Wells, Hiram	29	Foster, Rebecca	1
Wells, Jane	28	Bacon, Henry	39
Wells, Fannie	11	Bacon, Wm.	37
Wells, George	2	Bakonson Chas. W.	17
Dodd, Oscar	9	Baldwin, James	27
Dodd, Hiram	8	Baldwin, Huldy	25
Dodd, Willie	3	Baldwin, Cyntha	4
Gay, Columbus	41	Siden, Hiram	23
Gay, Morey	35	Grubbs, Minnie	16
Gay, Harmon	16	Patton, Henry	22
Gay, Syntha	11	Patton, John	19
Gay, Geo.	3	Carson, Kitt	11
Stevens, John	23	Brumback, Wm.	28
Abernathy, Geo.	41	Colt, Peter	21
Peebles, Jas.	28	Colt, Susan	17
Goble, John	29	Day, Ferdinand	27
Goble, Chas.	23	Day, Julia	26
Drown, Chancey	15	Day, Mattie	2
Drown, Timothy	7	Cleveland, Chas.	15
Kimball, John H.	41	Dailey, Wm.	11

Names.	Age.	Names.	Age.
Kimball, Austin	16	Bean, Geo.	13
Henry, Wm.	3	McPherson, Jas.	19
Henry, Lucy	2	McPherson, Annie	14
Drew, Jerry	23	McPherson, Maggie	11
Drew, Andrew	20	Chiles, Horace	3
Pett-ngall, Hannah	19	Mussey, Eben	40
Pettingall, Iva	11	Mussey, Ruth	43
Pettingall, Mary	3	Boyed, Wm.	21
Reece, John	19	Hearral, Sam.	13
Reece, Tim.	14	Walton, James	9
59½ Reece, Benj.	11	Higgins, Thomas	17
Bowey, James	29	Higgins, Anna	16
Quinby, Henry	20	Higgins, James	11
Quinby, Chas.	17	Forester, Peter	20
Adams, Elisha	42	Hamlet, Edward	35
Adams, Clara	37	Hamlet, Calista	30
Adams, Wm.	17	Hamlet, Ezra	19
Fox, Christopher	42	Hamlet, Betty	3
Fox, Rebecca E.	39	Nye, Norman	2
Fox, John G.	18	Nye, Chas.	13
Fox, Ezra B.	14	Brackett, George	19
Fox, Hannah	11	Brackett, Mary	15
Fox, Renway	7	Brackett, Benj.	11
York, Jake	41	Nathan, Zack	20
York, Sallie	37	Smithe, Nathaniel	14
York, Geo.	19	Sumner, Frank	29
York, Wm.	11	Sumner, Henry	22
York, Hattie	7	Huddle, Mariah	18
York, Fred.	3	Duval, John	21
Ingreham, Isaac	17	Dudley, Erastus	37
Hemenway, Hiram	22	Dudley, Martha	30
Jacobs, Job	35	Dudley, Elizabeth	21
Jacobs, Katherine	34	Crownshields, Tim.	28
Jacobs, Sam'l	11	Spencer, Zack	41
Jacobs, Louis	2	Spencer, Ellen	30
Remington, Homer	22	Spencer, Rebecca	13
Glover, Stephen	16	Caruthe, Jack	5
Glover Philip	12	Caruthe, Martha	2
Barton, Wm.	17	Adderson, Pete	24
Barton, Zeb.	29	Adderson Sallie	20
Lord, Joseph	40	Adderson, Wm.	1
Lord, Hannah	37	Benjamin, Phin.	41
60 Lord, Van Amburg	20	Benjamin, Julia	33
Lord, Millie	16	Hazen, Thoms	22
Lord, Winnie	14	Hazen, Jane	16
Hatch, John	11	Barker, Ezra	29

Names.	Age.	Names.	Age.
Hatch, Chas.	9	Barker, Hulda	22
Field, Frances	36	Jillson, Mary	14
Field, Kate	35	Jillson, Emily	11
Field, James	11	Varney, Thomas	23
Field, Matilda	1	Varney, Henry	19
Daggett, John	26	Holmes, Wm.	16
McGee, Wm.	12	Holmes, Zack	11
Dalemer, Geo.	22	McCabe, Henry	20
Elmwood, Jas.	41	McCabe, Julia	11
Elmwood, Kate	37	McCabe, Bettie	2
Redcliff, Phil.	21	Slone, Thomas	35
Redcliff, Maria	17	Slone, Sarah	32
Kertley, Jas.	22	Slone, Emma	15
Vandyke, David	31	Slone, Hulda	9
Tanner, Rob.	17	Sloan, Jenitia	2
Sheppard, Hen.	19	Ruffus, George	13
McDonal, Ed.	23	Park, Jeff.	27
Dillingham, Geo.	13	Trundle, Reuben	41
Twain, Henry	32	Trundle, Jane	35
Johnson, Matilda	23	Trundle, Mary	17
Wise, James	16	Trundle, Emma	13
Stermes, Lydia	13	Blunt, James	21
Sternes, Hattie	32	Holden, Reuben	13
Sternes, Julia	24	Holden, Hattie	3
Bradley, Chas. W.	15	Platt, Susan	23
Hick, Mary	27	Powers, Lucy	20
Grant, Job	14	Powers, Mary	16
Grant, Wm.	3	Powers, Julia	3
60½ Hancock, Lucy	18	Ward, Thomas	16
Plat, Seth	21	Black, W. O.	51
Durkee, L. E.	30	Black, Martha	49
Durkee, Jane	25	Black, Daniel	25
Durkee, Lizzie	3	Black, Elick	21
Lowrey, F.	22	Martin, Nancy	30
Luellen, John	25	Martin, Wm.	13
Alexander, Wm.	31	Martin, Sarah	9
Davis, Ike	22	Martin, Rob't	2
Alexander, Isaac	15	Eliott, James	17
Alexander, Jane	3	Anderson, A.	27
Billingsy, S. S.	37	Snider, Jake	40
Martin, Maud	29	Snider, Pega	17
Wheetley, James	27	Price, Dan'l	24
Fish, Rob't	16	Price, A. B.	22
Paney, James	33	Price, Ella	2
Wever, N. W.	52	Dugin, Henry	28
Logan, Wm. O.	24	Dugin, Sarah A.	23

Names.	Age.	Names.	Age.
Henry, Rob't	35	Dugin, Ned	4
Robinson, Geo.	21	Scofield, Mattie	17
Fox, N. T.	27	Winthrop, I. P.	38
Phelps, E.	37	Thorn, Emery	47
Robinson, Ellen	20	Thorn, Virginia	35
Robinson, James	28	Thorn, Ida	15
Robinson, Martha	2	Thorn, Richard	19
Robinson, Wm.	1	Young, Wm.	41
Johnson, Wm. H.	34	Young, Sallie	37
Larey, Pat.	32	Young, Lizzie	19
Larey, Bridget	28	Young, Rachel	14
Larey, Mike	7	Higgins, David	32
Larey, Mag	4	Higgins, Thomas	27
Malone, James	22	Mosher, D. Ben.	13
61 Martin, M.	33	Mosher, Frank	5
Lovejoy, N.	34	Roback, Hiram	48
Lovejoy, Dolley	33	Roback, Anna	46
Lovejoy, John	8	Roback, Edward	19
Lovejoy, Huldy	5	Roback, Wm.	15
Lovejoy, Betty	1	Henderson, S. N.	16
Carney, Mike	20	Calvin, Martin	33
Ostrander, Dan.	17	Calvin, M. E.	29
Baker, Mace	24	Calvin, Ella	6
Baker, Susan	19	Maden, A. G.	23
Baker, L. D.	1	Maden, Helen	20
Hodgman, F.	17	Conley, I. A.	41
Willard, James	39	Bartlett, Rob't	27
		Hayes, L. O.	20

I, John Davis, appointed by the Governor of the State of Kansas specially to take the census of Harper county, in said State, do hereby certify that in pursuance of said appointment I proceeded to take said census; that the foregoing is a true and correct statement of the number and age of each of the *bona fide* inhabitants therein. The total number of *bona fide* inhabitants in said county is six hundred and forty-one (641).

Given under my hand this the 19th day of Aug., 1873.

JOHN DAVIS,

Special Census-Taker for Harper County, Kansas.

62 Among other questions the witness was asked the following question by counsel for the plaintiff: "I will ask you whether or not, prior to the year 1885, the law did not require all acts of the Governor to be deposited in your office." The defendant, by its counsel, objected to the question because testimony called for

by the question was not the best testimony and incompetent. Objection overruled and testimony admitted, to which ruling of the court the defendant, by its counsel, then and there duly excepted. The plaintiff then offered in evidence the proclamation of the Governor of the State of Kansas organizing the county of Harper; to the reading of which in evidence the defendant objected on the ground that the plaintiff must first show that the Governor had some cause or ground for issuing that proclamation; the law requiring that before the Governor could issue such a proclamation there must first have been presented to him a lawful petition. There is nowhere in this petition a statement that the petitioners, or twenty of them, are freeholders, and it does not appear from said petition that such had been proven to be the fact by three freeholders of the county, as the law required; which objection the court overruled and admitted the testimony; to which ruling of the court the defendant then and there duly excepted.

The plaintiff then offered in evidence the petition to the Governor of the State of Kansas praying that Harper county may be organized; to the reading of which paper in evidence the defendant at the time objected on grounds stated in previous objection; which objection was by the court overruled and testimony admitted, and to which ruling of the court the defendant then and there duly excepted.

The plaintiff then offered in evidence the report of the census-taker, John Davis; to the reading of which report counsel for
63 defendant objected; which objection the court overruled, and to which ruling of the court the defendant then and there duly excepted.

The plaintiff then offered in evidence the proclamation of the Governor of the State of Kansas organizing the county of Harper and appointing county commissioners and county clerk; to the reading of which the defendant at the time objected on grounds stated; which objection was by the court overruled and testimony admitted, and to which ruling of the court the defendant then and there duly excepted.

The plaintiff offered in evidence the deposition of A. W. Rucker.

Clerk in making up transcript for Supreme Court will copy such examination—that is, all of it that was read in evidence. (See record of short-hand reporter.)

64 ATTERSON W. RUCKER, of lawful age, being by me first duly examined, cautioned, and solemnly sworn to testify the truth, the whole truth, and nothing but the truth, deposeth and saith that—

Q. What is your name, residence, and occupation?

A. Atterson W. Rucker; I reside in Denver, Colorado; am a lawyer by profession.

Q. Did you ever live in Kansas; and, if so, when?

A. Yes; I lived in Baxter Springs, Kansas, from the latter part of sixty-nine up to about seventy-four.

Q. While living in Kansas did you know a man by the name of N. W. Weaver?

A. Yes.

Q. Did you know a man by the name of G. H. Walker?

A. Yes.

Q. How long did you know them?

A. I became acquainted with Walker when I first went to Baxter Springs, and with Weaver within the year following.

Q. Where did they live?

A. Walker lived in Baxter Springs and Weaver about eight to ten miles west of the Springs, in Cherokee county.

Q. Are you acquainted with the handwriting of N. W. Weaver and G. H. Walker?

A. I have had business relations with them, especially with Weaver, who was a client of mine for a considerable portion of the time while I lived at the Springs, and I have also been an attorney for Walker and have been engaged in lawsuits against him, and from my acquaintance with them and from conversations and matters relating to these bonds with them I am able to say I am acquainted with their signatures.

Q. Will you please examine the signatures upon the bond
65 and coupons here handed to you and state whether the signatures are the genuine signatures of G. H. Walker and N. W. Weaver?

A. It is my opinion that they are.

(The bond and coupons referred to by witness are hereto attached, marked Exhibit A, and made a part of this deposition.)

Q. When did N. W. Weaver and G. H. Walker leave Cherokee county and where did they go, if you know?

A. They left there in the fall of seventy-two or seventy-three and went West, in Kansas, and both of them told me they were located in Harper county.

Q. When and where did you see N. W. Weaver after he left Cherokee county?

A. I have seen him frequently at Columbus, Kansas, Kansas City, and once at St. Louis.

Q. At the time you saw him in St. Louis what, if any, conversation did you have with him in regard to the bonds of Harper county or what reference to the officers of Harper county?

A. I can only remember the substance of my talks with him at that time. From those talks I gathered that he was in St. Louis for the purpose of negotiating the bonds in question or that he had disposed of them, and that he was chairman of the board and had been delegated to negotiate the bonds by the board of county commissioners.

Q. Did he state at that time who were the other members of the board of county commissioners?

A. No; I would not say there was any occasion for the conversation to have gone to that extent.

Q. Did he state whether or not he was elected?

A. That I don't know.

66 Q. What, if anything, do you know about G. H. Walker being county clerk of Harper county at the time these bonds were issued?

A. I know he told me so when I met him on one occasion at Kansas City. I also learned that fact from N. W. Weaver and William H. Horner, the representatives of said Harper county.

Q. Had you any occasion, about this time—that is, in the fall of eighteen hundred and seventy-three or the spring of eighteen — seventy-four—to ascertain for yourself whether or not N. W. Weaver was chairman of the board of county commissioners of Harper county and whether G. H. Walker was county clerk of said county?

A. I did.

Q. What was the result of your inquiries?

A. That they were proper officers of said county.

Q. What occasion had you at that time to ascertain whether the parties referred to were the proper officers of Harper county, Kansas?

A. One Joseph Boyd, in seventy-two, became indebted to me for legal services rendered in his defense on a trial for murder, and, somewhere in the year eighteen hundred and seventy-three, to secure me for such services and, I think, the expenditure of some money for him, he gave me some of these bonds as security, representing to me that he was a contractor for the doing of work about the matter of the building of the court-house in Harper county, and while I held these bonds I made the investigation, resulting in my being satisfied with the sufficiency of the security.

Q. In prosecuting your investigations as to whether or not these parties were proper officers of Harper county I would ask you to state whether or not at that time you learned whether or not
67 an election had been held in 1873, in Harper county, in which Weaver was elected commissioner.

A. Yes; that was incident to the investigation I made at the time satisfying myself of the legality of the security, and I came to the conclusion that the certificates of the election, which then, as I remember, accompanied the bonds, were correct.

Q. These bonds at this time were accompanied by certificates of the election, were they?

A. Yes, sir.

Q. What became of the bonds you had taken from Mr. Boyd as security for your fees?

A. They were returned to him, or to his order, upon the payment of my fees.

ATTERSON W. RUCKER.

STATE OF COLORADO, } ss:
Arapahoe County, }

Subscribed and sworn to before me this 15th day of November, A. D. 1886.

[SEAL.] ALFRED L. HODDER,
Notary Public.

68 The defendant objected because the same was incompetent and immaterial. Objection overruled and testimony admitted; to which ruling of the court the defendant then and there duly excepted.

The defendant then objected to the answer to the following question in the deposition of A. W. Rucker: "Will you please examine the signatures on the bond and coupons here handed you and state whether the signatures are the genuine signatures of G. H. Walker and N. W. Weaver?" Answer. "It is my opinion that they are." Objection overruled; to which ruling of the court the defendant at the time duly excepted.

The defendant then objected to the following question in the deposition of A. W. Rucker: "These bonds at that time were accompanied by certificates of the election, were they?" as leading, incompetent, and immaterial. The objection was overruled, and to which ruling of the court the defendant at the time then and there duly excepted.

The plaintiff then offered the bond attached to the deposition of A. W. Rucker in evidence; to which the defendant objected as immaterial because the signatures to the bond are those of persons who had no authority to act and because there is no proof that they were county officers at the time these bonds are alleged to have been issued. The court overruled the objection, and to which ruling the defendant then and there duly excepted.

The plaintiff offered in evidence so much of page 13 in Session Laws of 1874, being the following: "District, No. 105; name, W. H. Horner; age, 32; politics, Republican; post office, Bluff City; county, Harper; occupation, lawyer;" to the introduction of which testimony the defendant objected as incompetent and immaterial; which objection was overruled; to which ruling of the court the defendant then and there duly excepted.

69 The plaintiff then offered in evidence so much of page 5 of the House Journal of the State of Kansas for the year 1874 as shows that Mr. Horner participated in the proceedings of the house of representatives of the State of Kansas as representative from Harper county; to which the defendant objected as incompetent & immaterial. Objection overruled; to which ruling of the court the defendant then and there duly excepted.

The plaintiff offered in evidence so much of page 56, same journal, as shows that a resolution was offered to investigate the settlement and organization and right of representatives of this house of the counties of Harper, Comanche, and Ness; to which the defendant objected. Objection overruled, and to which ruling of the court the defendant then and there duly excepted.

The plaintiff offered in evidence the proceedings on page 91, same journal, which shows that Mr. Horton moved that the resolution be referred to the judiciary committee; which motion prevailed; Objected to by the defendant. Objection overruled; to which ruling of the court the defendant at the time duly excepted.

The plaintiff offered in evidence so much of page 721 of same journal as shows that Mr. Horner was granted leave of absence from

the house. Objected to by the defendant because the same is incompetent and immaterial to prove or disprove and issue joined in this action. Objection overruled; to which ruling of the court the defendant then and there duly excepted.

The plaintiff then produced W. T. Cavanaugh, who deposed.

Clerk will here copy in full testimony of Cavanaugh when recalled.

70 W. T. CAVANAUGH, a witness for the plaintiff, being here recalled testified, as follows:

Direct examination—questions by Mr. SMITH:

Q. As assistant secretary of state of the State of Kansas, have you in your possession an abstract showing the number of votes polled at the general election on November 4th, 1873, held in Harper county?

A. I have; yes, sir.

Q. Is that the paper?

A. Yes, sir.

Mr. SMITH: I offer this paper in evidence.

Objected to by defendant.

Q. That is part of the records of the office of secretary of state?

A. Yes, sir.

Mr. LOVE: We object to its being placed in evidence until it is shown that the parties purporting to have executed this paper really did execute it, or if it is an abstract drawn by some other person in the auditor of state's office, then we object to it because it is incompetent, unless it is shown that the originals cannot be produced, and there is no testimony of that kind here.

Mr. LOVE: The law required that it be filed at that time?

WITNESS: Yes, sir.

Mr. LOVE: How do you know that?

WITNESS: By the statute.

Mr. LOVE: We object on the ground that there is no proof that this was ever made by the county clerk of Harper county. Any person could have sent it in. There is no seal of the county attached, or anything of that kind.

71 By the COURT: If the law requires the county clerk to have sent in such an abstract and that was received in the ordinary way there is very little doubt, as it became a part of the records of his office; it seems to me it is a fair presumption that it is what it purports to be. (To witness:) You received no other returns except these from that election?

WITNESS: My recollection is there were no state officers elected in 1873. Consequently there was no returns, except for members of the Legislature.

Mr. LOVE: Were you in office at that time?

WITNESS: No, sir.

Q. You did not receive this yourself, then?

A. No, sir.
Q. You don't know who received it, do you?
A. Only presumably; no, sir.
Q. You don't know, then, who did receive it?
A. No, sir.
Q. So far as you know, then, it might have been placed in the secretary of state's office by some other person?
A. Yes, sir; it was some time prior to my coming in there.

72 That he was at this time acting as assistant secretary of state, and had in his possession an abstract showing the number of votes polled on November 4th, 1873, in Harper county, and the plaintiff offered said paper in evidence; to which defendant objected until it is shown that the parties purporting to execute it —, or if it is an abstract drawn by some person in the secretary — state's office, then we object because it is incompetent, unless it is shown that the original cannot be produced; also on the ground that there is no proof that it was ever made by the county clerk of Harper county. Objection overruled and testimony admitted; to which ruling of the court the defendant then and there duly excepted.

Clerk will copy paper and envelope.

73 Abstract of the votes polled for members of the house of representatives at the general election held in Harper county, State of Kansas, on the 4th day of November, 1873, as canvassed and determined by the board of county commissioners of said county, on Friday, the 7th day of November, 1873.

Total number votes polled, 277.
For house of representatives: Wm. H. Horner received 256 votes and G. Phillips received 21 votes.

STATE OF KANSAS, *Harper County:*

I, Daniel Holson, county clerk of said county, do hereby certify that the foregoing is a true and perfect abstract of the canvass and determination of said vote as made by the county commissioners of said county and recorded in my office.

In testimony whereof I have hereunto set my hand and seal at Bluff City this the 8th day of November, 1873.

DANIEL HOLSTON, [SEAL.]
County Clerk of Harper County, Kansas.

74 (Copy of filings, &c., on envelop-.)

Hon. Wm. H. Smallwood, secretary of state, Topeka, Kansas, Harper. Filed Nov. 11th, 1873.

STATE OF KANSAS:

OFFICE OF SECRETARY OF STATE.

I, E. B. Allen, secretary of state of the State of Kansas, do hereby certify that the foregoing is a true copy of the returns of the general election for representative, Nov. 4th, 1873, held in Harper county, and filed in my office Nov. 11th, 1873.

In testimony whereof I have hereunto subscribed my name and affixed the official seal of my office.

Done at Topeka, Kansas, this 4th day of October, A. D. 1887.

[Seal Secretary of State, State of Kansas.]

E. B. ALLEN,
Secretary of State.

75 The plaintiff offered in evidence the envelope enclosing said paper, with all endorsements thereon. The defendant objected on the grounds stated of incompetency, and also because the law requires that there shall be endorsed upon the envelope a certified copy of the abstracts of the votes cast for Governor, members of the Legislature, &c., and there is no such endorsement as that on the envelope. Objection overruled; to which ruling of the court the defendant at the time duly excepted.

The plaintiff then produced Geo. W. Crane in person, who testified that he was in the blank-book business and that a person who called himself N. W. Weaver, and who represented himself to be chairman of the board of county commissioners, Harper county, Kansas, — and that he ordered a set of blank books, seals, &c., for said county; that most of the business was done through a man named Horner; he, Horner, paid him; that he furnished about $2,000 worth of books. The plaintiff offered in evidence said order or contract; to which the defendant objected because it was incompetent and immaterial and shows on its face that the chairman had no authority to make it; objection overruled and paper or contract admitted; to which ruling of the court the defendant then and there duly excepted. Clerk will copy contract.

76 BAXTER SPRINGS, *Oct. 16th*, '73.

G. W. Crane, Esq., Topeka, Kan.

DEAR SIR: I went from your city to Wichita; met our friends there & had the enclosed order executed; was taken so ill as to compel me to return home immediately; since which time I have been confined to my room until to-day; am now convalescing; think I will be able to leave for Harper the first of next week; had a letter from chairman of the board last night; everything is going on nicely; our buildings are paying well.

Please send us to Wichita following goods for Co. clerk:

# 558 to # 551	Record Co. warrants.
	" marks & brands.
	" bonds.
	" strays.

77

# 552 to # 556	Record election returns.
	Record roads.
	Journal Co. board.
	Ledger.
	Journal.

2,000 lithograph Co. warrants, same as Harvey county.

One ream legal cap.

½ gro. penholders.
1 M paper-fasteners.
2 q'ts Arn'd's ink.
2 gross pens.
1 doz. mucilage.
½ doz. inkstands, 1.50.
1 bank " 3.00.
Seal Co. clerk.
" dist. "
" register deeds.
" probate court.
" Bluff City town Co., Harper Co., Kans.
(# 557.) One justice docket & blanks.
558. One leather at folio, 16 x 22.
2 brass-edge rules, 16.
1 d'z. Faber pencils # 2.

Send these goods just as soon as possible, as they are now badly needed; write me at Wichita when they will be shipped. Send goods & bill to me.

Am too weak or would write more.

Yours truly, WM. H. HORNER,
For Comm'rs.

[Written on the margin in pencil:] Daniel Hobson, Co. clerk, Harper Co.

78	Record of county warrants, Deney	20 00
	" marks & brands "	20 00
	Record of bonds, Deney	20 00
	" strays "	22 00
	" roads "	20 00
	" proceeding board of com'rs, Deney	20 00
	Ledger	20 00
	Journal	20 00
	2,000 county warrants	40 00
	1,000 envelopes, p't'd, X white, 6 in.	4 75
	1,000 " " manilla, 9 in.	6 00
	250 manilla wrappers, flat	5 00
	1,000 letter-heads	7 50
	3 r'ms 16 lb. legal	16 80
	½ gro. penholders	2 35
	Election returns	20 00
	Reception record, med.	28 00
	Deed record "	24 00
	Mortgage record "	24 00
	Chattel-mortgage record, med.	24 00
	Official bonds	24 00
	McGill's fasteners, ½ in.	3 35
	Gen'l index, deeds	30 00
	" " mortgage	30 00

Minor index, deeds		6 50
" " mortgages		6 50
Plat book, 4 qrs.		25 00
1,000 letter-heads		7 50
1,000 envelopes		4 75
79 Record of subcontractors' liens, Deney		20 00
Execution docket, Deney		24 00
Bar docket, Deney		24 00
Motion " "		24 00
Subpœna " "		24 00
Fee " "		24 00
Trial " "		24 00
Foreign exe. docket, Deney		24 00
Appearance " "		24 00
Record of recog. & bonds, Deney		20 00
Complete record "		20 00
Abstract of judgments "		20 00
Disbursement record "		20 00
Witness' & jurors' claims		24 00
Mechanics' liens		20 00
Sheriff's returns		20 00
Journal		20 00
Record notary public, 5 qr., Deney		17 00
Attorney's receipt book, 5 " "		17 00
1,000 letter-heads		7 50
1,000 envelopes		4 75
500 " manilla, large		4 00
Journal probate court, 6 qr., Deney		18 00
Docket of ex. & adm. " "		18 00
Record of wills " " "		18 00
" " bonds		18 00
" guardianship		18 00
Record annual settlements		18 00
80 Appearance & report of adm.		18 00
Claims presented and allowed		18 00
Record of final settlement		18 00
County seal (5 seals) probate, dist., regis., Bluff City town Co., Harper Co., Kans.		30 00
4 quarts Arnold's ink		4 00
4 gro. pens, 505		4 00
5 combination & bal. to com.		4 50
1 doz. Morgan's mucilage, 4 oz.		3 50
2 leather portfolios		10 00
2 rulers		2 00
5 M manilla envelopes, 9 in.		19 50
5 M " " 6 in.		15 45
5 M posters		60 00
3 M circulars, thin paper, ½ note		10 00
3 M letter-heads, with circular		30 00
500 certificates of stock, fancy lith.		75 00
1 sales book		

6 justice's dockets, 19.00	114 00
3 trustee records	15 00
3 clerk "	15 00
3 stray "	21 00
3 road "	15 00
3 treas. cash books, 2.00	6 00
3 order books, 200 ea.	10 50
Justice of the peace blanks	20 00

81 George W. Crane, Topeka, Kansas.

DEAR SIR: Please furnish the county of Harper with the following books & stationery, to be paid for in the scrip of said county of Harper, bearing 10 per cent. interest, said scrip to be redeemed on or before the first day of January, A. D. 1875, by cash or bonds of said county, at 10 per cent. discount from face, October 4th, 1873.

By order of board of county commissioners.

N. W. WEAVER,
Chairman Board.

DANIEL HOBSON,
County Clerk.

Medium paper, plain	$3.	per qr.		All to be bound in extra Russia raised bands #1, A. F. Brown's ledger paper.
" " printed	3.50	" "		
"	3.	" "		
" plain	2.50	" "		

Send bonds & seal of Co. cl'k to Horner, at Baxter Springs. Write him at Baxter when the other goods are sent to his address at Wichita. Send by freight and notify him of the number of packages. Send all as soon as possible. Notify him immediately how soon the bonds will be ready and send by exp. to Baxter.

82 The plaintiff then offered in evidence the bond attached to Mr. Rucker's deposition and 19 other bonds, with the coupons attached, which are referred to in the plaintiff's petition, and also offered in evidence the certificate of registration of the auditor of State, attached to these bonds.

Objected to by the defendant on the grounds that the execution of the bonds by the officers of the county has not been proven, and has not been proven that G. H. Walker was the clerk of the county or acting as the clerk of the county; and we object to the certificate of the auditor of State being placed in evidence because that certificate is a mere spoliation of the bond, the auditor of State had no right to make any endorsement on these bonds, and because it has not been proven that the certificate endorsed thereon was made by the auditor of State. The objection was overruled and testimony admitted; to which ruling of the court the defendant then and there duly excepted.

83 Clerk will copy one bond and all endorsements thereon.

EXHIBIT "A." (Alfred L. Hodder.)

UNITED STATES OF AMERICA, *State of Kansas.*

Number 1. Dollars, 500.

Court-House Bond of Harper County, State of Kansas.

Know all men by these presents that the county of Harper, in the State of Kansas, acknowledges itself to owe and promises to pay to bearer five hundred dollars, lawful money of the United States of America, on the first day of December, A. D. eighteen hundred and eighty-three, at the National **(500)** Park Bank, in the city of New York, with interest at the rate of ten per cent. per annum, payable semi-annually on the first days of June and December of each year, on the surrender of the annexed coupons as they become due, at said National Park Bank in the city of New York.

This bond is one of a series of fifty bonds, of five hundred dollars each, issued for the purpose of building a court-house in said county in pursuance of and in accordance with the vote of a majority of over three-fifths of the qualified electors of said county of Harper, at an election held for that purpose, as required by law, on the 4th day of November, A. D. 1873.

In testimony whereof the board of county commissioners of said county have caused this bond to be signed by the chairman of said board and by the county clerk of said county and to be sealed with the seal of said county and to be registered, as required by law, at Bluff City, the county seat of said county, this the first day of December, A. D. 1873.

[SEAL.] N. W. WEAVER,
Chairman Board of County Commissioners.

Attest: G. H. WALKER,
County Clerk of Harper County.

Court-House Bond of Harper County, State of Kansas.

I, D. W. Wilder, auditor of the State of Kansas, do hereby certify that this bond was regularly and legally issued, that the signatures thereto are genuine, and that such bond has been duly registered in my office in accordance with an act of the Legislature entitled "An act to authorize counties, incorporated cities, and municipal townships to issue bonds for the purpose of building bridges, aiding in the construction of railroads or other works of internal improvements, and providing for the registration of such bonds, the registration of other bonds, and the repealing of all laws in conflict therewith," approved March 2d, 1873.

Witness my hand and official seal this 12th day of March, 1874.

D. W. WILDER,
Auditor of State.

84 25 The County of Harper, State of Kansas, 25

Will pay to the bearer, at the National Park Bank, in the city of New York, on the first day of **(4)** December, 1875, twenty-five dollars, for six months' interest due on court-house bond. No. one.

N. W. WEAVER,
Chairman Board of County Commissioners.

G. H. WALKER,
County Clerk.

The plaintiff then offered in evidence the section 28, chapter 77, of the session laws of 1874.

(Clerk will here copy.)

85 *Amount.*

Chapter 77, section 28, Session Laws of Kansas, 1874.

Harper county may issue bonds—

SEC. 28. For the purpose of funding certain outstanding county warrants and paying the current expenses of the county of Harper for the year A. D. 1874, the board of county commissioners of the county of Harper are hereby authorized and empowered to issue and sell or exchange the bonds of said county to an amount not exceeding the sum of fifteen thousand dollars, or so much thereof as may be necessary for the purpose named in this section, and to sell the same for cash, or to exchange them for the outstanding county warrants or other lawful evidences of indebtedness against said county of Harper; and in case said bonds are sold for cash to apply the proceeds thereof in payment of the indebtedness named in this section: Provided, That said bonds shall not be exchanged for county warrants or other evidences of county indebtedness for less than dollar for dollar.

86 The defendant objected on the ground that that was passed subsequent to the alleged issuance of the bonds. Objection overruled; testimony admitted; to which ruling of the court the defendant then and there duly excepted. Plaintiff here rested his case.

Defendant offered in evidence, to sustain the issues upon its part, the deposition on file in this action, the deposition of Emily S. Rice; and the plaintiff objected to the question 7 of said deposition for the reason that the same is something occurring subsequently and is entirely incompetent, irrelevant, and immaterial and has no bearing upon this case whatever. Objection sustained; to which ruling of the court the defendant at the time duly excepted.

Plaintiff objected to question number 8 of said deposition being read in evidence, which reads as follows: "State what, if any, record there is in your office containing any proceedings of said board of county commissioners of said county prior to 26th day of August, 1878," for the same reason as stated to question 7. Objections sustained; to which ruling of the court the defendant at the time duly excepted.

Plaintiff objected to the reading of question No. 9 of said deposition, reading as follows: "State whether you have any knowledge from any source, as such officer or otherwise, of any record of any proceeding of a board of county commissioners of Harper county Kansas, before the 26th day of August, 1878," for the same reasons as stated in objection to question No. 7. Objection sustained; to which ruling of the court the defendant then and there duly excepted.

Plaintiff objected to question No. 10 of said deposition, reading as follows: "State whether there is any record in your office showing that the board of county commissioners of said Harper county, called an election of the qualified electors of said county to
87 vote upon the question of issuing court-house bonds of said Harper county in the year 1873," for the reason stated in objections to question No. 7. Objection sustained; to which ruling of the court the defendant then and there duly excepted.

Plaintiff objected to question No. 11 of said deposition, reading as follows: "State whether there is any record in your office showing that an election was held in the year 1873 by the qualified electors of said county to authorize the issuance of court-house bonds of Harper county, Kansas," for the reasons stated in objection to question 7. Objection sustained; to which ruling of the court the defendant then and there duly excepted.

Plaintiff objected to question No. 14 of the said deposition, reading as follows: "State whether or not you have in your said office a record showing the registration of bonds issued by said Harper county, Kansas," for the reasons given in objection to question No. 7. Objection sustained; to which ruling of the court the defendant then and there duly excepted.

The defendant then offered in evidence the deposition of D. F. Long, on file in this action, in which the witness testified that he was in the territory now composing Harper county, Kansas, from 1869 to 1873; that during the year 1873 there were no *bona fide* residents in the said territory constituting Harper county, and that N. W. Weaver and G. H. Walker, the parties purporting to have signed the bonds sued upon in this action and to have acted as county clerk and county commissioner, respectively, did not reside in said territory during the year 1873. The plaintiff objected to the testimony offered for the reason that it is incompetent, irrelevant, and immaterial. Objection sustained; to which ruling of the court the defendant then and there duly excepted.

88 The defendant then offered in evidence the deposition of L. L. Butler, on file in this action, in which said witness testifies that during the year 1873 he was in Harper county, Kansas, engaged in hunting buffalo, and that during that year there was not a *bona fide* resident in Harper county or any permanent inhabitant therein.

Plaintiff objected to the testimony offered for the reason that it was incompetent, irrelevant, and immaterial. Objection sustained; to which ruling of the court the defendant then and there duly excepted.

The defendant then offered in evidence the deposition of O. S. Northrup, on file in this action, which witness testifies that in the year 1873 he lived in Sedgwick county, Kansas, and was well acquainted with the territory now composing Harper county, Kansas; that during that year there was no *bona fide* resident in Harper county, Kansas, and no permanent inhabitant living therein.

The plaintiff objected because the said testimony is incompetent, immaterial, and irrelevant. Objection sustained; to which ruling of the court the defendant then and there duly excepted.

The defendant then offered in evidence the deposition of H. J. Devore, on file in this action, in which the witness testifies that in the year 1873 he was hunting and trapping in the territory now composing Harper county; that he was familiar with the territory now comprising said county and frequently passed over the same during said year; that there was no *bona fide* resident in said county during said year or permanent inhabitant living therein.

The plaintiff objected to said testimony as incompetent, immaterial, and irrelevant. Objection sustained; to which ruling of the court the defendant at the time duly excepted.

The defendant then offered in evidence the deposition of T. H. Stevens, which is on file in this action, which witness testifies as follows:

89 That Anthony, in said Harper county, Kansas, is the only place in said county at which the business of said county has been carried on; that there never was in said county such a place as Bluff City; that he is a member of the board of county commissioners and has been since 1878; that prior to the year 1878 there was no organization of Harper county, and that in the year 1878 he helped to organize the same.

The plaintiff objects to the said testimony for the reason that the same is incompetent, immaterial, and irrelevant. Objection sustained; to which ruling of the court the defendant then and there duly excepted.

The defendant then offered in evidence the deposition of George Lutz, on file in this action, in which the witness testifies that in the months of November and December, 1873, he was at a place called Bluff City, Harper county, Kansas; that there was no house or building at that place or anywhere near it; that there was a tent on the ground; that there was no buildings or houses in the territory now comprising Harper county, unless old man Devore had a house in the southeast part of said territory; that there was no *bona fide* resident in Harper county in December, 1873; that he was personally acquainted with N. W. Weaver and G. H. Walker—he became acquainted with Weaver and Walker in Cherokee county, Kansas, in the spring of 1873—and that their place of residence during all of said year was in said Cherokee county; that there was no election held in Harper county, Kansas, in the year 1873 for the purpose of electing officers; that he was notified by a man named Weaver that he was one of the board of county commissioners of Harper county; that there never was an election in the year 1873 for the purpose of issuing bonds to build a court-house in Harper

county, Kansas; that there never was a meeting of the pretended board of county commissioners in Harper county, Kansas,
90 during the year 1873; that the pretended board of county commissioners never issued or signed the bonds sued upon in this action.

C. B. Smith *being* duly sworn by order of the court to compute the interest due on the bonds and coupons, which is done; which computation was objected to by counsel for defendant for the reason that it is more than the legal rate of interest allowed by the laws of the State of Kansas, which objection was by the court overruled; to which ruling of the court the defendant, by counsel, then and there duly excepted.

The plaintiff objected to the said testimony because the same is incompetent, immaterial, and irrelevant; objection sustained; to which ruling of the court the defendant then and there duly excepted. Defendant noted.

The court thereupon handed to the jury a prepared verdict for the plaintiff in the sum of $17,645.00, and instructed them to sign the same, by one of their number; to which action of the court the defendant, by counsel, then and there objected, which objection was by the court overruled; to which ruling of the court the defendant, by counsel, then and there duly excepted, and to which instruction of the court the defendant, by counsel, then and there objected, which objection was overruled; to which rulings of the court the defendant then and there duly excepted.

The above and foregoing is all the testimony introduced on the trial of the above-entitled cause.

Thereupon the court gave judgment for the plaintiff in the sum of $17,645 over the objection and exception of the defendant, by its counsel.

The defendant then moved for a new trial; which motion was in words & figures as follows:

Comes now the defendant, by its attorneys, E. J. Fisher, Isaac A. Love, and G. W. Finch, who move the court for a new trial
91 in the above-entitled action for the reasons—

First. Because the verdict is not sustained by sufficient evidence.

Second. Because the verdict is contrary to the law and the evidence.

Third. Because of error of law occurring at the trial and duly excepted to at the time by the defendant.

Fourth. Because the court erred in permitting the plaintiff to introduce incompetent testimony over the objection of the defendant which was by the defendant at the time excepted to.

Fifth. Because the court erred in excluding and rejecting competent & relevant testimony offered by the defendant, and to which ruling the defendant at the time excepted.

Sixth. Because the court erred in admitting any testimony on the part of the plaintiff, to be introduced over the objection of the defendant, to which ruling the defendant at the time duly excepted.

Seventh. Because the court erred in instructing the jury to find for the plaintiff and in ordering the jury to sign a verdict without having submitted the question of fact to said jury, which instructions were given over the objection of the defendant, to which the defendant at the time duly excepted.

Eighth. Because the verdict was for the plaintiff, when, under the law and the evidence, it should have been for the defendant.

Wherefore the defendant prays the court to set aside the verdict herein and to grant to the defendant a new trial of this action.

E. J. FISHER,
ISAAC A. LOVE &
G. W. FINCH,
Attorneys for Defendant, The Board of County Commissioners of Harper County, Kansas.

And thereupon the court overruled said motion for a new trial; to which ruling of the court the defendant, by its attorneys, then and there duly excepted.

92 And, forasmuch as the above matters and things do not appear sufficiently of record, defendant now presents to the court this its bill of exceptions, and prays that the same may be signed and sealed, according to law, and made a part of the record of this case.

C. G. FOSTER,
Dis'ct Judge.

Endorsed: No. 5285. Edward Rose *vs.* The Board of County Commissioners of the County of Harper. Bill of exceptions. Filed Jan. 17, 1887. A. S. Thomas, clerk, by Frank H. Holt, deputy.

93 *Bond.*

In the Circuit Court of the United States for the District of Kansas.

EDWARD ROSE, Plaintiff, *vs.* THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF HARPER AND STATE OF KANSAS, Defendant.	General No. 5285.

Know all men by these presents that we, The Board of County Commissioners of Harper County and State of Kansas, as principal, and Isaac A. Love and G. W. Finch, as sureties, are held & firmly bound unto Edward Rose in the sum of five hundred dollars, to be paid to said Edward Rose, his heirs, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals. Dated this 15 day of January, 1887.

Whereas the above-named board of county commissioners of Harper county, State of Kansas, hath prosecuted a writ of error in the

Supreme Court of the United States to reverse the judgment rendered in the above-entitled action by the circuit court of the United States for the district of Kansas:

Now, therefore, the condition of this obligation is such that if the above-named The Board of County Commissioners of Harper County and State of Kansas shall prosecute its said writ of error to effect and answer all cost if it shall fail to make good its plea, then this obligation shall be void; otherwise to be and remain in full force and virtue in law.

THE BOARD OF COUNTY COMMISSIONERS
OF HARPER COUNTY, STATE OF KANSAS,
By ISAAC A. LOVE AND
G. W. FINCH, *Its Attorneys.* [SEAL.]

94 ISAAC A. LOVE. [SEAL.]
GEO. W. FINCH. [SEAL.]

Approved:
C. G. FOSTER, *Judge.*

Endorsed: No. 5285. E. Rose, plaintiff, *vs.* The Board of County Commissioners of Harper County, Kansas, defendant. Bond on appeal. Filed Jan. 17, 1887. A. S. Thomas, clerk.

95 UNITED STATES OF AMERICA, } *ss:*
District of Kansas, }

I, A. S. Thomas, clerk of the circuit court of the United States of America for the district of Kansas, do hereby certify the foregoing to be a true, full, and correct copy from the record of all the proceedings had in said court in the action of Edward Rose *vs.* The Board of County Commissioners of the County of Harper, No. 5285, in said court, except that part of the petition omitted as per stipulation of parties, a copy of which stipulation is contained in this record.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office in Topeka, in said district of Kansas, this 3rd day of October, A. D. 1887.

{ The Seal of the Circuit Court of the United States, District of Kansas. 1862. }

A. S. THOMAS, *Clerk.*

96 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the district of Kansas, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, between Edward Rose, plaintiff, against The Board of County Commissioners of the County of Harper, defendant, a manifest error hath happened, to the great damage of the said defendant, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice

done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, this 17th day of Jan., A. D. 1887.

[The Seal of the Circuit Court of the United States. 1862.]

A. S. THOMAS,
Clerk of the Circuit Court of the United States for the District of Kansas.

[Endorsed:] No. 5285. Edward Rose *vs.* Board of County Commissioners of the County of Harper. Writ of error. Filed Jan. 17, 1887. A. S. Thomas, clerk.

97 The United States of America to Edward Rose, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit — of the United States for the district of Kansas, wherein The Board of County Commissioners of the County of Harper, in the State of Kansas, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice be done to the parties in that behalf.

Given under my hand at the city of Topeka, in the district of Kansas, January 17, 1887.

C. G. FOSTER,
Dis'ct Judge.

We hereby accept service of the above.
Jan'y 19, 1887.

ROSSINGTON, SMITH & DALLAS,
Att'ys for Edward Rose.

[Endorsed:] 5285. Board of County Commissioners of the County of Harper, pl'ff in error, *vs.* Edward Rose, def't in error. Citation. Filed Jan. 19, 1887. A. S. Thomas, clerk.

98 *Petition in Error.*

UNITED STATES OF AMERICA :

In the Supreme Court of the United States, of the October Term, in the year of our Lord, 1887.

THE BOARD OF COUNTY COMMISSIONERS OF HARPER COUNTY, KANSAS, Plaintiff in Error,

vs.

EDWARD ROSE, Defendant in Error.

Afterwards, to wit, on the 10th day of October, in the same term, before the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, comes the said plaintiff in error, The Board of County Commissioners of the County of Harper, in the State of Kansas, by its attorneys, and says that in the records and proceedings in the said case of Edward Rose *vs.* The Board of County Commissioners of Harper County aforesaid there is manifest error in this, to wit:

1st. Said verdict is not sustained by sufficient evidence.

2nd. Said verdict and judgment are contrary to the law.

3rd. That there were errors of law committed by the trial court which were duly excepted to by this plaintiff in error at the time they were made.

4th. The court erred in admitting evidence over the objection of this plaintiff in error.

5th. The court erred in excluding and rejecting testimony and evidence offered by this plaintiff in error on the trial of said action, which said evidence and testimony was and is competent and material.

6th. The court erred in permitting any testimony or evidence to be introduced by defendant in error over the objections of this plaintiff in error.

99 7th. The court erred in instructing the jury to find a verdict for the said Edward Rose, the defendant in error.

8th. The court erred in overruling the motion of this plaintiff in error for a new trial.

9th. The court erred in rendering judgment for the defendant in error, Edward Rose, over the objection of this plaintiff in error.

All the above and foregoing errors will fully appear in the record, proceedings, and transcript in said case of Edward Rose *vs.* The Board of County Commissioners of Harper County, Kansas.

And the said Board of Commissioners of Harper County, Kansas,

prays that the judgment aforesaid may be reversed, annulled, and altogether held for naught, and that this plaintiff in error be restored to all things which it has lost by occasion of the said judgment.

LELAND J. WEBB,
Attorney for Pl'ff in Error.
FINCH & FINCH AND
I. A. LOVE,
Of Counsel for Pl't'f in Error.

[Endorsed:] No. 5285. Filed Oct. 5, 1887. A. S. Thomas, clerk.

Endorsed on cover: No. 907. Kansas C. C. U. S. The Board of County Commissioners of the County of Harper, plaintiff in error, *vs.* Edward Rose. Filed October 25, 1887.

Office Supreme Court U. S.
FILED.
APR 1 1889
JAMES H. MCKENNEY
CLERK

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1888.

No. 284.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF HARPER, Plaintiff in Error,

vs.

EDWARD ROSE, Defendant in Error.

In Error to the Circuit Court of the United States for the District of Kansas.

BRIEF ON BEHALF OF PLAINTIFF IN ERROR.

WM. E. EARLE,
WM. T. S. CURTIS,
For Plaintiff in Error.

McQUEEN, PR.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1888.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF HARPER, Plaintiff in Error,
vs.
EDWARD ROSE, Defendant in Error.

No. 284.

Brief for Plaintiff in Error.

This is a Writ of Error to the Circuit Court of the United States for the District of Kansas.

The action was on twenty bonds of $500 each, and certain five per cent. semi-annual coupons alleged to have been issued by the County of Harper, in the State of Kansas, on the first day of December, A. D. 1873.

This case involves the legality of the county organization, but we shall submit that it is wholly distinguishable from the Comanche County case, reported in 133 U. S., 198.

Statement of Facts.

It is denied in the verified answer of the defendant that—

I.

1st. That Harper County was a body politic or corporation on December 1st, 1873, the date upon which the alleged bonds purport to have been executed.

2d. That N. W. Weaver, who purports to have signed said bonds as "Chairman Board of County Commissioners," was chairman of the Board of County Commissioners of Harper County on December 1st, 1873, when the said alleged bonds purport to have been executed.

3d. That G. H. Walker, who purports to have signed said alleged bonds as "County Clerk," was county clerk of the County of Harper in December, 1873, when the said alleged bonds purport to have been executed.

4th. That the Board of County Commissioners of the County of Harper made, executed or delivered the bonds and coupons sued on in this action.

5th. That the alleged bonds and coupons were ever registered in Harper County as required by law.

Section 12, Kansas Act 1872, chapter 68, is as follows:

"SEC. 12. The officers of any county, city or township issuing such bonds shall make registration thereof in a book to be kept for that purpose, showing the date, number, maturity and rate of interest of such bonds; and if issued for the building of a bridge, what bridge; or, if to aid in the construction of a railroad or other work of internal improvement, and whether the same be a donation or for stock therein; and shall, at the time of the issuing of the same, make out and transmit to the Auditor of State a certified statement of the number, amount and character of the bonds so issued, to whom issued, and for what purpose, which statement shall be attested by the clerk of the county, city or township issuing the same,

together with the corporate seal of such county, city or township, if any such there be."

6th. That there was any election held as to the issuance of said bonds prior to their alleged issuance as is required by law.

II.

1st. And in said verified answer it is alleged "that all papers, acts and statements relating to the organization attempted to be made of the County of Harper and State of Kansas, August 20, 1873, and everything contained therein were false, fraudulent and forged."

2d. And in said verified answer it is alleged "that the said bonds and coupons and all acts as to their attempted issue were false, fraudulent and forged."

III.

The reply to said answer is not verified.

IV.

Sec. 1, ch. 61, Kansas Laws of 1886, amends sec. 108, ch. 80, General Statutes, so as to read as follows:

"SEC. 108. In all actions, allegations of the execution of written instruments and indorsements thereon, of the existence of a corporation or partnership, or of any appointment or authority or the correctness of any account duly verified by the affidavit of the party, his agent or attorney, shall be taken as true unless the denial of the same be verified by the affidavit of the party, his agent or attorney."

Assignments of Error.

The plaintiffs in error assign the following as errors committed by the Circuit Court of the United States for the District of Kansas, as appears from the record and proceedings in said cause:

1. That there is error in this, to wit, that the court permitted the plaintiff below to offer testimony tending to establish matters denied in the defendant's verified answer when the plaintiff had not filed a verified reply.

2. That there was error in this, to wit, that the court permitted the plaintiff below to introduce evidence tending to disprove allegations made in the defendant's verified answer when no verified reply had been made.

3. That there is error in this, to wit, that the defendant offered evidence tending to show that there were no proceedings of the board of county commissioners of said County of Harper prior to the 26th day of August, 1878; and, upon objection being made thereto by the plaintiff, the court refused to hear the same.

4. That there was error in this, to wit, that the defendant offered testimony tending to show that the clerk of the County of Harper had no knowledge as such officer or otherwise of any record of any proceedings of a board of county commissioners of Harper County before the 26th of August, 1878; and, objection being made thereto, the court sustained the objection.

5. That there was error in this, to wit, that the defendant offered testimony tending to show that there was no record in the office of the clerk of the county showing that an election was held in the year 1873 by the qualified electors of said county to authorize the issuance of

courthouse bonds of Harper County, Kansas; and, upon objection being made by the plaintiff, the same was sustained by the court.

6. That there was error in this, to wit, that the defendant offered testimony tending to show that there was no registration of the bonds alleged to have been issued by Harper County in the office of the clerk of said county; and, upon objection being made, the court refused to receive the testimony.

7. That there was error in this, to wit, that the defendant offered testimony tending to show that there were no *bona-fide* residents in the territory constituting Harper County from the year 1869 to the year 1873; and, the same being objected to on the ground that it was incompetent, immaterial and irrelevant, the court sustained the objection and refused to receive the same.

8. That there was error in this, to wit, that the defendant offered testimony tending to show that N. W. Weaver and G. H. Walker, the parties purporting to have signed the bonds sued upon in this action, and to have acted as county clerk and county commissioner, respectively, did not reside in the territory constituting Harper County during the year 1873; and, objection being made by the plaintiff on the ground that it was incompetent, immaterial, and irrelevant, the court refused to receive the same.

9. That there was error in this, to wit, that the defendant offered testimony tending to show by parties engaged in hunting buffalo that there was not in the territory constituting the County of Harper any permanent inhabitant during the year 1873; and, the same being objected to by the plaintiff on the ground that it was incompetent, im-

material and irrelevant, the court sustained the objection and refused to receive the same.

10. That there was error in this, to wit, that the defendant offered the deposition of one H. J. Devore, tending to show that in the year 1873 he was hunting and trapping in the territory now composing Harper County; that he was familiar with said territory, and frequently passed over the same during said year, and that there was no *bona-fide* residents in said county during said year; and, objection being made by the plaintiff on the ground that said testimony was incompetent, immaterial and irrelevant, the court refused to receive the same.

11. That there was error in this, to wit, that the defendant offered testimony tending to show that Anthony is the only place in said County of Harper at which the business of said county has ever been carried on or conducted, and that there was no place known in the county as "Bluff City"; and, upon objection being made by the plaintiff that the testimony was incompetent, immaterial, and irrelevant, the court refused to receive the same.

12. That there was error in this, to wit, that the defendant offered the deposition of one T. H. Stevens tending to show that he was a member of the board of county commissioners and had been since 1878, and that prior to the year 1878 there was no organization of Harper County, and that in that year the said witness assisted in the organization of the same; and, objection being made by the plaintiff that the testimony was incompetent, immaterial, and irrelevant, the court refused to receive the same.

13. That there was error in this, to wit, that the defendant offered testimony tending to show that at a place

called "Bluff City" there was in the months of November and December, 1873, a tent on the ground, but there was no buildings or houses in the territory now comprising Harper County, unless by one Devore in the southeast part of said territory; and, upon objection by the plaintiff, the court refused to receive the same.

14. That there was error in this, to wit, that the defendant offered testimony tending to show that N. W. Weaver and J. H. Walker during the year 1873 were in Cherokee County, and that there was no election in Harper County in the year 1873 for the purpose of electing officers; and, upon objection by the plaintiff, the court refused to receive the same.

15. That there was error in this, to wit, that the defendant offered testimony tending to show that there never was a meeting of the pretended board of county commissioners in Harper County during the year 1873, and that the pretended board of county commissioners never issued the bonds sued upon in this action; and, upon objection by the plaintiff, the court refused to receive the same.

16. That there was error in this, to wit, the court overruled the demurrer of the defendant that the petition failed to set out a cause of action, there being in the petition no allegation that the bonds in suit had been registered by the county board as required by the statute. (f. 13.)

17. That there was error in this, to wit, the court refused to allow the defendant judgment on the pleadings, defendant having filed a verified answer denying the allegations of the petition and the plaintiff having filed no verified reply. (f. 18 and 25.)

18. That there was error in this, to wit, the court admitted the auditor's certificate in evidence without proof of its execution by him. (f. 82.)

19. That there was error in this, to wit, that the court handed to the jury a prepared verdict for the plaintiff in the sum of $17,645, and instructed them to sign the same by one of their number. (See f. 90.)

Argument.

We have said we shall try to distinguish this case from that of Comanche County *vs.* Lewis.

Comanche County was fraudulently organized in 1873, and in 1875, the character of the organization being disclosed, it was treated as an unorganized county until 1885, but this court has held that its bonds, reciting upon their face that they were issued in accordance with authority conferred by the statute and in accordance with a vote validates them in the hands of a *bona-fide* holder, and the certificate of the State auditor that the bond was regularly issued, that the signatures were genuine, and *that the bond had been duly registered* is conclusive upon the municipality. This decision is, of course, conclusive as far as it is applicable to the case at bar, and we shall not infringe upon it.

Harper County was likewise fraudulently organized in 1873, and a bolder and more bare-faced fraud has rarely been exposed to the light of judicial investigation, but, the fraud being perpetrated under the form of law, third parties are held to be unaffected by them, and, indeed, the fraudulent organization has not only been recognized by the legislature, but has been expressly passed upon in a direct proceeding and held to be legal by the Supreme Court of the State. (See State *ex rel.* Attorney-General *vs.* Stevens, 21 Kansas, 210.) We therefore shall not for a

moment tax your time or vex your patience with an attempt to reopen the discussion upon matters which are adjudicated.

It is wholly upon other lines than the infirmities of this fraudulent organization of the county that the present case must be considered and decided.

Since Myer *vs.* Muscatine (1 Wall.) a great many cases on municipal bonds have been before this court, and the right to presume compliance with the requirements has been more closely defined and marked than formerly. The mere signature does not impart to the obligation that validity which regularity in proceeding and conformity with statutory power gives; nor does the recital of certain requisites give any guaranty of compliance with others, or raise any presumption of their performance. It was expressly held in School District *vs.* Stone (106 U. S., 183) that recitals that bonds were issued by authority of election, and that the election was lawfully held, do not import any compliance with the statute, which prohibits incurring indebtedness beyond a specified amount.

The court says this limitation is technical, and that "a strict construction ought to be the rule where it is proposed by mere recitals upon the part of municipal officers to exclude inquiry as to whether bonds issued in its name were made in violation of the constitution and of the statute.

In this opinion the court uses the following language, to which we desire to call special attention in this connection:

"We are unwilling to enlarge or extend the rule, now established by numerous decisions. Sound public policy forbids it. Where the holder relies for protection upon mere recitals, they should at least be clear and unambiguous, in order to estop a municipal corporation, in whose name such bonds have been made, from showing that they were issued in violation, or without authority, of law."

Judicial Construction of Section XIV.

Section 14 of this act has been construed by this court in the case of Lewis *vs.* Commissioner (105 U. S., 739) and it may be suggested that the decision therein is adverse to the views here submitted. If so, we desire to call attention to the exact question before the court in that case.

Barbour County, on an election, legally authorized the issue of $100,000 of bonds to the N. K. & S. W. R. R., and a few days thereafter they were regularly issued and placed by the commissioner in the hands of one Hutchinson, to be deposited with the State Treasurer "as required by the terms of the proposition upon which the people had voted;" and, it may be added, in accordance with the terms and provisions of the "eleventh section, upon the construction of which the case turned in the court below." Hutchinson never delivered them to the treasurer, but, having procured them to be registered by the auditor, he fraudulently put them in circulation. As is said by the court, "by the act of the county officers intrusting the bonds to one upon whom no official responsibility rested, he was enabled to represent himself to the auditor as presumptively the owner because the bearer of the bonds." In the decision the learned Justice uses this express language, indicating the exact case being decided and the subsequent scope to be given the decision:

"We have carefully considered the reasons upon which the judge of the Circuit Court based the conclusion that the county was not liable upon the bonds even in the hands of a *bona-fide* purchaser for value. His opinion seems to proceed upon these grounds: That under the act of 1872 it was a condition precedent that the bonds should not bear interest nor be negotiable until they should pass through the hands of the State treasurer, he alone being invested with authority to determine when

they were to be delivered to the parties entitled thereto for the purposes of registration; that the requirement of that condition was manifest from the statute, of the terms of which all were bound to take notice; that although the bonds, on their face, disclosed no conditions whatever for their delivery, the purchaser should have ascertained whether, prior to their registration, they had, in the first instance, been deposited with that officer as escrows, and that he could not take the certificate of the auditor as conclusive evidence that the statute had been pursued; that as the bonds were not placed in the hands of the treasurer, they never had the quality of negotiability, and could not, therefore, have been rightfully registered, nor their regularity and legality certified by the auditor under his seal of office; and since the conditions affixed by the popular vote had never been performed by the construction of the proposed road, the bonds were not the valid obligations of the county."

Then, too, if we look at the reason of the statute we must see that the certificate of registration by the auditor could not be intended to supercede the requirement for registration in the county commissioners' office, which is itself a check upon the auditor.

We have just seen in another case that these guards require a strict rule of construction, and it can not be inferred that the court intended to construe away so important a protection as the county registration, which constitutes the only check upon the auditor, just as his registration constitutes one on the commissioners.

The fair and reasonable construction of the act clearly is that the commissioners' registration might have appeared by a certificate on the bond, and to this would have been applicable the required certificate of the auditor "that the signatures thereto were genuine," for he is required to register them in a special manner, to wit, "in the same manner that such bonds are registered by the officers issuing the same."

It may be observed, too, that the certificate "that the signatures are genuine" can't apply to the signatures to the bonds, for the obvious reason that the genuineness of the signatures to the bonds is fully covered by the certificate that the bonds "have been regularly and legally issued." Important as is the certificate of registration of the auditor, and essential to the value of these securities as it is, that it should have the full measure of force intended manifestly to be given it, yet it is not possible to accept the idea that the court meant to construe away so valuable a check upon the auditor and so important a guard of the rights of the makers of the bonds as the evidence of registration with their own local officials—their county board.

There is nothing in the statute giving the auditor the power to certify that the county officers had registered the bonds, and, consequently, no conclusion or inference can be deduced from the auditor's certificate, which is only authorized by law to cover the regularity and legality of the *issue*, the genuineness of the signatures, and his own registration. So that, if the auditor had certified that they had been registered in the county, it would not avail the plaintiff, since his certificate to that end was not authorized. How much less then can it be held to cover this material statutory requirement not included in it.

In Dixon County *vs.* Field (111 U. S., 83) the court, in connection with the recitals of corporate officers in municipal bonds, says:

"A recital there of facts which the corporate officers had no authority to determine, or a recital of matters of law, does not estop the corporation."

Now we submit that the registration of these bonds in the county, by the county board and in their office, is an

essential prerequisite to the validity of these bonds. It is expressly made so by the statute. It is not a discretionary matter. It is not merely directory. Section 12, herein quoted, is not only clear, positive and absolute in its requirement, but section 14 requires the auditor to "register the same in his office, in a book to be kept for that purpose, in the same manner that such bonds are registered by the officers issuing the same."

Then it was manifestly error not to allow testimony offered to show that the bonds were never registered by the county board, and that in fact at this time and for years there were no records of Harper County.

Defect in the Petition.

But the statute requires this registration by the county officers; and it was consequently a material allegation of the petition. It was not made; and the defendant demurred that for this defect it failed to set out a cause of action. The demurrer was overruled; and we allege that this was error.

In Bissell *vs.* Spring Valley Township, 111 U. S., on page 172, this exact question is considered. It was alleged in that petition that the bonds were registered in the office of the Auditor of Kansas according to law, and the certificates were exhibited; and this court says:

"But it is not alleged that the auditor notified the officers of Cherokee County of this record, nor that these officers entered the fact in the record kept by themselves, and without these additional steps what was done by the auditor was incomplete and ineffective. Without showing compliance with these requisitions, the bonds can not be considered registered bonds, nor entitled as such to the benefits of the act."

For the reasons stated by the court in this case, we sumit that the demurrer should have been sustained, and that there was error in overruling it.

Registration by the county board being an explicit requirement of the statute, was a material and necessary allegation of the petition, for as the fact is a condition of the validity of the bonds, there was no liability on the defendant without such registration, and in the absence of such an allegation no cause of action was disclosed.

Evidence being inadmissible to establish a material fact not alleged in the pleadings, it was error to admit the plaintiff's testimony to maintain a petition which failed to set out a cause of action. No certificate of registration by the county board appearing on the bonds, the need of an allegation of the fact was not obviated by setting out a copy of the bond.

Auditor's Certificate.

In overruling the defendant's demurrer for the insufficiency of allegations in the petition to constitute a cause of action, the learned judge evidently proceeded upon the legal position of the adequacy of the auditor's certificate on the bonds as conclusive of all its recitals. But the fatal error in this position as applicable to this particular case is that the certificate is unproven. The certificate was offered in evidence, and objection was taken to its admission on the ground that "it has not been proven that the certificate indorsed thereon (the bond) was made by the auditor of State." The objection was overruled and the certificate of the auditor, as well as the bond, was admitted and an exception duly taken. (f. 82.)

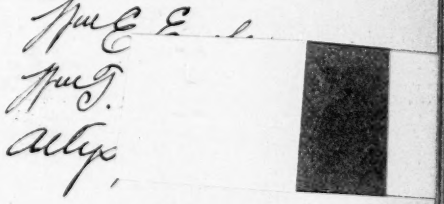
It was clearly necessary that the execution of the certificate should be proven before it could be considered by the court and the recitals taken as an estoppel of the defendant.

Besides the execution of the certificate, as well as that of the bond, was raised by the verified answer, and to which no verified reply was made.

Effect of Verified Answer.

The defendant answered, denying, under oath, all the material allegations of the petition, and this was verified in the form prescribed by the code of procedure, but the reply thereto was not verified, and, under the provision of the code set forth herein in statement of fact IV, the defendant was entitled to judgment, and the defendant formally moved the court for judgment, on the pleadings (folios 18 and 19), which motion was refused and exceptions thereto duly taken. (See f. 25.)

The plain terms of the statute quoted are so absolutely conclusive that no argument can add to its force. There was not error in refusing to admit testimony on any point which the auditor's certificate estopped the defendant, but the objection here goes entirely beyond such an exception. The code of procedure prescribes what shall be the effect of a denial when contained in a verified answer: "Unless the denial of the same be verified, it shall be taken as true."



Office Supreme Court U. S.
FILED.
APR 2 1891
JAMES. H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1890.

No. 284.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF HARPER, PLAINTIFF IN ERROR,

vs.

EDWARD ROSE, DEFENDANT IN ERROR.

BRIEF AND ARGUMENT OF DEFENDANT IN ERROR.

W. H. ROSSINGTON,
CHARLES B. SMITH,
E. J. DALLAS,
Att'ys for Def'ts in Error.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1890.

No. 284.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF HARPER, PLAINTIFF IN ERROR,

vs.

EDWARD ROSE, DEFENDANT IN ERROR.

BRIEF AND ARGUMENT OF DEFENDANT IN ERROR.

This is an action on certain municipal bonds claimed to have been issued by the Board of County Commissioners of Harper County, in the State of Kansas, on the 4th day of November, 1873, for the purpose of building a court-house. The bonds sued upon are of the denomination of five hundred dollars each, and each contains a recital that it is one of a series of fifty bonds issued for the purpose of building a court-house in Harper county, in pursuance of and in accordance with the vote of a majority of over three-fifths of the qualified electors of said county of Harper, at an election held for that purpose, as required by law, on the 4th day of November, 1873; and the bonds further recite that the board of county commissioners had caused the same to be

signed by the chairman and by the county clerk, to be sealed with the seal of the county, and to be registered, as required by law, at Bluff City, the county-seat of the county, on the first day of December, 1873. Upon each bond is the following certificate of registration signed and sealed by the auditor of State:

Court-House Bond of Harper County, State of Kansas.

I, D. W. Wilder, auditor of the State of Kansas, do hereby certify that this bond has been regularly and legally issued, and that the signatures thereto are genuine, and that such bond has been duly registered in my office in accordance with an act of the Legislature entitled An act to authorize counties, incorporated cities, and municipal townships to issue bonds for the purpose of building bridges, aiding in the construction of railroads or other works of internal improvements, and providing for the registration of such bonds, the registration of other bonds, and the repealing of all laws in conflict therewith.

Approved March 2nd, 1873.

Witness my hand and official seal this 12th day of March, 1874.

[SEAL.] D. W. WILDER,
Auditor of State.

Attached to each bond were divers coupons which were also sued upon.

Defendant's answer admits that the defendant is a body politic and corporate at the time of beginning the action, but denies that it was a body politic or corporate existing under and by virtue of the laws of the State of Kansas on the first day of December, 1873, or at any time prior thereto, and never was until on the 17th day of March, 1874, and denies that the Board of County Commissioners of the County of Harper, State of Kansas, ever made, executed, or delivered the bonds sued on in the action, and denies that at the time the bonds and coupons were alleged to have been issued there were any person or persons, body politic or corporate, in the

county of Harper, State of Kansas, who had any authority or power to issue the bonds and coupons sued on in the action; denies that the bonds and coupons were registered in Harper county as required by law, or that there was ever any election held, and finally alleges that all papers, acts, and statements relating to the organization attempted of the county of Harper, State of Kansas, on the 20th of August, 1873, and everything contained therein, were false, fraudulent, and forged, and that the said bonds and coupons and all acts as to their attempted issue were false, fraudulent, and forged.

In the trial of the case the plaintiff, defendant in error here, recovered judgment upon all the bonds and coupons not barred by the statute of limitations; whereupon defendant moved for a new trial on the ground, first, because the verdict was not sustained by sufficient evidence; second, because the verdict was contrary to the law and the evidence; third, because of error of law occurring at the trial and duly excepted to at the time by the defendant; fourth, because the court erred in permitting the plaintiff to introduce incompetent testimony over the objection of the defendant, which was by the defendant at the time excepted to; fifth, because the court erred in excluding and rejecting competent and material testimony offered by the defendant, and to which ruling the defendant at the time excepted; sixth, because the court erred in admitting any testimony on the part of the plaintiff to be introduced over the objection of the defendant, to which ruling the defendant at the time duly excepted; seventh, because the court erred in instructing the jury to find for the plaintiff and in ordering the jury to sign a verdict without having submitted the questions of fact to said jury, which instructions were given over the objection of the defendant, and to which the defendant at the time duly excepted; eighth, because the verdict was for the plaintiff, when under the law and evidence it should have been for the defendant.

This motion for a new trial was overruled, whereupon the defendant prepared its bill of exceptions and brought the case on error to this court.

By reference to the record it will be found that the real and substantial questions, if any such there be, in this case are very few and are covered by previous decisions made by this Court.

There was no objection made to the form of the bond or the conclusiveness of its recitals, and the real question upon which the trial turned and to which the objections were taken was as to the validity of the organization of the county.

This organization was instituted and this indebtedness created at about the same time and in the same manner as the organization of the county of Comanche and the issuing of bonds by that county. The case of the County of Comanche *vs.* Lewis, decided in this Court during its last term, is in all substantial particulars parallel to this case. That case will be found reported in 133 U. S., 198.

It was agreed in the Comanche County case that the bonds were fraudulently issued by certain conspirators who accomplished the organization of the county and who issued these bonds after becoming the *de facto* officers of the county, and who appropriated the proceeds of the bonds to themselves and shortly after left the county and never returned to it. It is a part of the public history of this State that a similar conspiracy was set on foot coincidently in the counties of Harper, Comanche, and Barber. The bonds of two of these counties, issued under similar circumstances and in the same manner as these bonds, have been before this Court for consideration, to wit, the bonds of Barber county in the case of Lewis *vs.* Commissioners of Barber County, 105 U. S., 739, and the bonds of Comanche county in the case of the Commissioners of Comanche County *vs.* Lewis, *supra.*

At the time these bonds were issued there were in force the following statute, chapter 52 of the Statutes of 1868, which statute is to be found on page 509 of the Compiled Laws of

1885, and which has never been expressly repealed. We print the first three sections of this statute:

"CHAPTER 52.

"*Internal Improvement.*

"AN ACT to authorize the board of county commissioners and the authorities of incorporated cities to issue bonds for purposes of internal improvement.

"*Be it enacted by the Legislature of the State of Kansas:*

"SECTION 1. That the board of county commissioners and authorities of incorporated cities are hereby empowered to issue the bonds of the county or city, as the case may be, for any sum necessary, and negotiate a loan thereon, for the purpose of building bridges and erecting buildings for public purposes: *Provided*, Such bonds shall not draw a greater amount of interest than ten per cent. per annum: *And provided further*, That before such bonds shall be issued the same shall be ordered by a vote of a majority of the voters of the county or city voting at an election held for that purpose, as hereinafter provided.

"SEC. 2. The bonds herein provided for shall be issued in sums of not less than one hundred dollars, payable (in the discretion of the board of county commissioners or authorities issuing the same) in not less than ten years nor more than twenty years from the date thereof, with interest annually or semi-annually; said bonds to be made payable at any point or place discretionary with the authorities issuing the same, and shall have coupons attached." (As amended by act approved February 26, 1867. Published May 27, 1867.)

"SEC. 3. Before issuing any bonds under the provisions of this act the question of constructing any particular improvement or building shall be submitted to a vote of the people thereof, at a time and place to be fixed by the commissioners or the authorities aforesaid: *Provided*, A petition shall be presented to them, signed by not less than fifty voters, asking a vote on the question. Upon such petition being presented they shall, within five days thereafter, give notice, by publication in a newspaper of general circulation in the county or city, of the time and place of holding such election, and the same shall be conducted under the general election laws of this State, and those voting in favor of the

improvement proposed shall have written or printed in (on) their ballots, 'For the bonds,' and those opposed, 'Against the bonds;' and if a majority voting at such election shall be in favor of such bonds, then said commissioners or city authorities may issue the same, as provided in this act."

There was also in force the act of March 2, 1872, being "An act to authorize counties, incorporated cities, and municipal townships to issue bonds for the purpose of building bridges, aiding in the construction of railroads, water power, or other works of internal improvement, and providing for the registration of such bonds, the registration of other bonds, and the repealing of all laws in conflict therewith."

Section 1 provides:

"SECTION 1. That the board of county commissioners of any county, the mayor and common council of any incorporated city, and the trustee, clerk, and treasurer of any municipal township in this State are hereby empowered to issue the bonds of such county, city, or township in any sum necessary not greater than ten per cent., inclusive of all other bonded indebtedness, of the taxable property of such county, city, or township, for the purpose of building bridges, free or otherwise, or to aid in the construction of railroads or water power by donation thereto, or the taking of stock therein, or for *other works of internal improvement.*"

Section 14 of the act is as follows:

"SEC. 14. Within thirty days after the delivery of such bonds the holder thereof shall present the same to the auditor of state for registration, and the auditor shall, upon being satisfied that such bonds have been issued according to the provisions of this act, and that the signatures thereto of the officers signing the same are genuine, register the same in his office, in a book to be kept for that purpose, in the same manner that such bonds are registered by the officers issuing the same, and shall, under his seal of office, certify upon such bonds the fact that they have been regularly and legally issued, that the signatures thereto are genuine, and that such bonds have been registered in his office according

to law, for which registration and certificate the auditor shall be entitled to a fee of one dollar for each bond so registered, to be paid by the holder thereof."

This section was under consideration in this Court in the case of Lewis *vs.* The Commissioners of Barber County, above cited, and also in the case of Commissioners of Comanche County *vs.* Lewis.

There also was upon the statutes of Kansas a general act relating to borrowing money and issuing bonds in payment therefor; which act is cited and referred to in the Comanche County case, *supra.*

There was also before the Court and considered by the Court divers public records of the State of Kansas, the record of the organization of the county of Harper beginning at the bottom of page 31 of the record and ending at page 42. There were also divers acts and proceedings of the Legislature of the State of Kansas introduced in evidence which do not appear in the bill of exceptions, but which are part of the public acts of the State.

It appeared, among other things, that an election for representative of Harper county was duly certified to the secretary of state, and by the secretary of state, as required by law, duly certified to the Legislature, and William H. Horner, so declared to be elected, was duly admitted as a representative and participated in the proceedings of the Legislature that winter. Among other acts passed was one authorizing certain counties to fund their outstanding county warrants and pay current expenses. This act is chapter 77 of the Session Laws of 1874. Section 28 is found printed on page 53 of the record.

There was at the time of the trial and introduced in evidence and also extant in the statute books, but not included in the record, house joint resolution No. 1 to appoint a committee to examine the condition of Barber, Comanche, and Harper counties. Under the constitution and laws of

the State of Kansas a joint resolution is a public act and not merely a vote and resolve of the Legislature. It must be signed by the presiding officers of the respective bodies and approved by the Governor and published as a law the same as any other act.

House joint resolution No. 1 is as follows:

"*House Joint Resolution No.* 1,

"To appoint a committee to examine the condition of Barber, Comanche, and Harper counties.

"Whereas it appears from the report of the secretary of state, made to this house on the sixteenth day of September, A. D. 1874, that there are but six hundred and eight inhabitants in the county of Barber, and that the county of Comanche has but six hundred and thirty-four inhabitants, and that the county of Harper has but six hundred and forty-one inhabitants; and

"Whereas it further appears from the report of the auditor of State, made to this house on the sixteenth day of September, A. D. 1874, that the present bonded indebtedness of the county of Comanche, so far as can be ascertained at present, is seventy-two thousand dollars, and that the present bonded indebtedness of the county of Harper is forty thousand dollars, and that the present bonded indebtedness of the county of Barbour is one hundred and forty-one thousand three hundred dollars; and

"Whereas it is important that the interest of the people and the honor of the State should be protected, and in order to enable the Legislature that shall convene in January, A. D. 1875, to have the proper and necessary information for intelligent action respecting the condition of said counties; therefore

"*Be it enacted by the Legislature of the State of Kansas:*

"SECTION 1. That a committee of two be appointed (one by the speaker of the house of representatives and one by the president of the senate), whose duty it shall be, in connection with the attorney general, to proceed at once and fully and carefully investigate the facts in respect to the organization, present condition, financial and otherwise, and as to the

number of inhabitants of the said counties of Barbr, Comanche, and Harper, such investigation to be completed on or before the first day of December, A. D. 1874, and said commissioners shall make a full report respecting the matters hereinbefore named to the Governor, and the said report shall be submitted by the Governor to the next Legislature with his message."

By this resolution the bonded indebtedness of Harper county is recognized to be forty thousand dollars, and includes, as in the case of Comanche and Barber, the bonds in question in this case, it being a part of the public history of the State that all of these indebtednesses were created at the same time and under circumstances so nearly similar that they were treated by the Legislature and by the courts as in all respects identical.

There was also before the court the proceedings of the house of representatives and senate, including, among other things, the majority report of the investigating committee under house joint resolution No. one. By this report, which was adopted, it appeared that the organization of Harper county was regular and valid.

An effort was made to have the organization instituted in this case, to wit, the organization of the 20th of August, 1873, declared void. Suit was instituted in the name of the State on the relation of the Attorney General against the County Commissioners in the nature of a *quo warranto* proceeding. The opinion of the supreme court in this case is to be found in 21 Kans., at page 214. The court says:

"For a time, though a brief one, a *de facto* organization actually existed. The Legislature, having the whole control of the matter, recognized such organization and thereby ratified it. Whatever the actual facts may be, we are bound to presume that the Legislature of 1874 had full knowledge of the situation of affairs in the county and passed the act of that year with a complete understanding of its consequences. The removal of the officers from the county and the failure to elect officers did not blot out or destroy the organization given life by legislative recognition."

In this county, as in Comanche, a considerable period ensued after the first organization, and after the Indian excitement of the fall of 1874, when the county was practically vacated of inhabitants except cattlemen holding herds of cattle within its boundaries, when no election took place, no officers served, and no organization of the county was kept up. Subsequently the county was populously settled, and shortly after the coming in of settlers in 1879 the effort above alluded to was made to efface the organization of the 20th of August, 1873, and thereby rid the county of the obligation of this indebtedness. This effort, as we have shown, was abortive, and the organization of August 20, 1873, was, by recognition of the Legislature, validated.

The doctrine involved in the case of the State *ex rel. vs.* Stevens, *supra*, had been previously enunciated in a similar case, to wit, the case of the State on the relation of the Attorney General against the Commissioners of Pawnee County, 12 Kan., 426, to which the Court is referred. The whole subject was reviewed by this court in the case of Commissioners of Comanche County *vs.* Lewis, *supra*, and the principle established by the Kansas supreme court in these two cases was fully confirmed.

It therefore appears that the issue made, which at the trial was the main issue in the case, as to the validity of the organization of Harper county, was in all respects correctly decided by the court, and there was offered and could be offered no countervailing testimony as to the beliefs, recognitions, and hearsay of individuals that would be admitted to overturn or controvert a case so legally conclusive as this upon the subject of organization. In a word, the organization had been recognized by both branches of the Legislature, by the Governor, by the auditor of State, and finally by the supreme court of the State of Kansas in a direct proceeding brought to controvert its existence, and the organization so recognized and validated was, as the supreme court said, the organization of August 20, 1873, which was asserted

to be fraudulent and to confer no right upon the officers acting under such organization to do or perform any public act. There, therefore, can be no error in any of the rulings of the court below which denied to the plaintiff in error here the right to introduce parol testimony tending to prove that no such organization was had or existed.

The only other question in the case, therefore, is as to the genuineness of the signatures of the officers signing the bonds. No affirmative proof was offered or could be offered by the defendant below that the individuals whose names were signed to the bonds were not officers of the county. We made a case in chief by competent proof that these men were acting as *de facto* officers, and that their signatures were genuine, and in addition we offered the certificate of registration by the auditor of State.

In the first place, the bonds in question were registrable bonds. The Legislature of the State of Kansas, in chapter 52, *supra*, which was in force at the time these bonds were issued, had authorized the board of county commissioners and the authorities of incorporated cities to issue bonds for *purposes of internal improvement*, and in the first section of that act it is said: "The board of county commissioners and the authorities of incorporated cities are hereby empowered to issue bonds of the county or city, as the case may be, for any sum necessary and negotiate a loan thereon for the purpose of building bridges and erecting buildings for public purposes." This, of necessity, would include a court-house. So here is a legislative definition appurtenant to the State of Kansas defining what works of internal improvement are or may be.

Reference is also to be had to the case of Leavenworth County *vs.* Miller, 7 Kan., 479, and Burlington *vs.* Beasley, in 94 U. S.

The auditor of state of the State of Kansas therefore treated them as registrable bonds, recognized them as valid obligations of the county, certified that they were regularly

and duly issued, and that the signatures thereto were genuine. Section 14 requires that before registering the auditor shall be satisfied, among other things, that the signatures thereto of the officers signing the same are genuine. By reference to the case of Lewis *vs.* Commissioners of Barber County, 105 U. S., and the Comanche County case, above referred to, it will be seen that the determination of the auditor as to the facts which he is required by law to certify to is conclusive.

It is also in evidence that the plaintiff below, who was an aged German physician in Saint Louis, bought the bonds in good faith, and paid for the bonds of a new State, and presumably a new county, a full and valid consideration. The same equitable consideration which induced the court to uphold the Comanche County bonds applies with equal, if not greater, force to the bonds in this case. The court, in the Comanche County case, says:

"There thus appears ample recognition on the part of the Legislature of the validity of the organization, and under repeated adjudications its validity cannot now in this collateral way be challenged. And this is no mere technical ruling. It rests on foundations of substantial justice. It is true that the present inhabitants have been wronged by the fraudulent acts of these conspirators in 1873–'74, and it is a hardship for them to be bound for debts they did not contract and from which they received no benefit; but, on the other hand, it would be an equal hardship to the plaintiff to lose the money he has invested in securities placed on the market, whose validity was attested to the fullest extent by both the executive and legislative departments of the State. When both of those departments give notice to the world that a county within the territorial limits of the State has been duly organized and exists, with full power of contracting, can it be that a purchaser cannot in open market safely purchase the securities of that county? Does the duty rest on him to traverse the limits of the county and make personal inspection of the number of inhabitants? If any wrong has been done to the county through the want of attention on the part of the State authorities,

equity would suggest that the State should bear the burden and not cast it upon an innocent party residing far from the State and acting in reliance upon what it has done."

Here, for example, was a bond purporting to be a court-house bond, duly and legally issued, certified to be the valid obligation of the county by the auditor of the State, who also certified as to the genuineness of the signatures of the officers signing the same, and that the law had in all respects been complied with; that the bond was issued for a public purpose. This bond comes to the hands of a reputable broker in a large city several hundred miles away from the State, and is offered as the valid obligation of the county. It bears upon it the impress of the seal of the county, and it also bears upon it the broad seal of one of the executive departments of the State. There is everything here to assure the purchaser of the validity and genuineness of the instrument in all respects. If, as was urged in the Comanche County case, he should come to the State of Kansas and examine the records of the executive office and of the legislative department he would find all the proceedings touching the organization of this county to be valid and regular and the acts and doings of its officials fully recognized by the officers of the State. If he went to the statute books he would find that the officers were authorized and directed and permitted to fund outstanding county warrants. There would be nothing to put him upon inquiry in the slightest degree, either upon the face of the bonds themselves or anything short of an actual inspection of the county itself and its affairs and condition, that the bonds were not in all respects the genuine and valid obligations of the county.

There appears, therefore, to be no substantial errors in this case of which the defendant has any right to complain, unless such errors may be found in the exclusion of testimony in the form of depositions offered by defendant, and we submit in the first place that for the most part these ob-

jections are not presented in such a way as to enable the Court to determine whether the questions asked to which objection was offered were competent, relevant, or material. We think that all of the testimony introduced upon our part was competent and relevant to the issues framed in the case, and we therefore do not care to consider at length any objections to the introduction of such testimony.

The first claim of error assigned by the defendant in the exclusion of testimony offered by it is to be found on page 53. The defendant offered in evidence, to sustain the issues upon its part, the deposition of Emily S. Rice, and the plaintiff objected to question 7 for the reason that the same is something occurring subsequently and is entirely incompetent, irrelevant, and immaterial and has no bearing upon this case whatever. Objection sustained; to which ruling of the court the defendant at the time excepted. Now, who Emily S. Rice was, and what question 7 was, or what competency she had to testify in the case nowhere appears in the record, and therefore cannot be assumed by the court. We ourselves do not know, and if we ever did know have forgotten, what question 7 had reference to, and we have also forgotten what, if any, official position was held by Emily S. Rice or on what ground it was claimed that she was entitled to bear testimony in this case.

The second exception is to the sustaining of objection to question 8 of the deposition of Emily S. Rice, whose competency, as we say, does not appear in the record nor the ground of objection: "State what, if any, record there is in your office containing any proceedings of said board of county commissioners of said county prior to the 26th day of August, 1878." How the refusal of this offered question prejudiced the defendant we cannot see, and, as it was objected to for incompetency of the witness—and her competency is nowhere shown—we cannot see how any error can be shown to exist in refusing to allow the question to be asked.

The same applies to the next four questions. It does not appear in the record what office is referred to, or whether Emily S. Rice was the officer, or whether she had charge of the records, or whether she was in any way competent to testify as to their contents.

The testimony of D. F. Long and of L. L. Butler and O. S. Northrop, that was offered, and of H. J. Devore and of T. H. Stevens was testimony of individuals tending to disprove the validity and existence of the organization of Harper county, against the conclusive record testimony which we had offered in chief, and was properly excluded.

The testimony of George Lutz is also incompetent; but it will be noticed that George Lutz does not testify nor assume to testify that Weaver and Walker were not assuming to act as county commissioner and county clerk of that county during that time, which was the only subject upon which his testimony might be relevant or competent to any issue of the case. His testimony that the pretended board of county commissioners never issued or signed the bonds sued upon in this action cannot be relevant unless it is shown that he was present at all the meetings of the board, and, as the law does not require the board of county commissioners to sign the bonds, but the chairman, his negation of the fact that the board signed the bonds cuts no figure.

Our own recollection of these depositions is that the questions and answers all through betrayed their incompetency and irrelevancy to the issues of the case, and we therefore believe that the court committed no error in excluding this testimony.

In conclusion, we have to say that the judgment in this case, as in the Comanche and Barber County cases, is eminently a righteous judgment, fully anticipated by the courts and authorities of the State of Kansas. We are far from believing that the original intention of the parties who went into these counties was to issue fraudulent bonds. We believe their purpose to have been legitimate and honest

originally, but the drought and Indian excitement in the years 1873 and 1874 resulted in depopulating these counties and caused a diversion of these bonds, which in this and in another case we believe to have been issued originally for a legitimate public purpose and with an honest intention to use them for such purpose. That indebtedness had been created by these municipalities, including Harper county, was a matter of public knowledge, as is shown by house joint resolution No. 1, herein printed. That the Legislature investigated and found the proceedings looking to the organization of these counties regular, and made no effort, nor did any of the officers of the State, to denounce them as fraudulent and to prevent the sale and disposition of these bonds to innocent parties, it seems to us is a sufficient affirmation of the right of these organizations, however vague and shadowy, whether *de jure* by virtue of an election called and held or *de facto* merely, to issue the bonds in question.

It appears from the records which were introduced at the hearing that from the early summer of 1874 down to the year 1878 Harper county became and was practically depopulated, when a large immigration took place and the county became at once populous and prosperous, and the abortive effort made to extinguish and efface the original organization makes it clear that the organization under which Harper county is now existing and transacting business is the very organization which they are denying in this case and declaring to be fraudulent. Certainly they were apprised in the most public way by house joint resolution No. 1, as well as the universal and wide-spread knowledge of the facts existing in Kansas, that this indebtedness existed against this territory when they went in and pretended to set up a new organization. They entered upon the possession of this county with the knowledge that those who had engineered and accomplished the organization of the county, the validity of which had been recognized by the Legislature, had created debts against the county by issuing

these and certain funding bonds which were still outstanding.

Compared to the aggregate valuation of the county, even before its settlement, these debts are slight. Their payment will impose no great burden upon the people who have taken up this abandoned organization and are now carrying it on; but it appears in evidence that these bonds had been bought in good faith by an old German physician as an investment to sustain his declining years, who was lulled to repose by the recitals of the bonds themselves that they were issued for a valid public purpose, in pursuance of a valid election, and that they had been duly registered in the county, which recitals included all the requirements of the law in that behalf as it existed; and also by an elaborate certification that the bonds were issued in pursuance of law by one of the chief executive officers of the State. It seems to us that it would be grossly inequitable to permit Harper county, after all these years, to urge the fraudulent acts of the *de facto* officers of this county to defeat this claim.

All of which is respectfully submitted.

W. H. ROSSINGTON,
CHARLES B. SMITH,
E. J. DALLAS,
Att'ys for Def'ts in Error.

Office Supreme Court U. S.
FILED.
APR 6 1891
JAMES. H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

No. 284.

THE BOARD OF COUNTY COMMISSIONERS IN THE COUNTY OF HARPER, PLAINTIFF IN ERROR,

vs.

EDWARD ROSE, DEFENDANT IN ERROR.

SUPPLEMENTAL BRIEF AND ARGUMENT OF DEFENDANT IN ERROR.

At the time leave was given to us to put in a supplemental brief we had not seen the brief of learned counsel for plaintiff in error. While in accordance with such leave we have deemed it not improper to present the few following suggestions, we do not, since perusal of plaintiff in error's brief, regard it as essential to make any extended argument in reply.

I.

The learned counsel, not being familiar with our local practice, has been led into error by the record with reference to the rule of verification of pleadings. It was not necessary for plaintiff below to file a verified reply. Indeed, it was

not necessary to file a reply at all. A perusal of defendant's answer discloses that, though extended and circumstantial in its averments, it amounts simply to a general denial of plaintiff's petition. We sue upon bonds which we allege to be executed by a certain corporation, and of necessity plead the existence and authority of that corporation to issue them at the time they bear date. Now, unless the truth of these two facts averred by us in our petition, namely, the existence of the corporation and its execution of these bonds, be denied under oath, the same will be taken as true. We would not have been required to prove them unless put in issue by a verified denial. In other words, the verified denial has served to shift the burden of proof as to the particular facts enumerated in the statute which would otherwise be presumed to be established. We cannot shift such burden back again by a verified reply, and a denial of a denial, either verified or unverified, involves a manifest absurdity. All the benefit the defendant would get by a verified answer it obtained in this case by compelling us to affirmative proof of the existence of the corporation and the execution of the bonds. That we established these facts by competent and abundant testimony cannot be denied.

II.

It is claimed that the court erred in admitting the registration certificate on the back of the bonds. The execution of this is not denied. Registration as a fact is denied, and of the existence of such fact the certificate upon the back of the bonds is merely evidential. The signature of Mr. Wilder and the broad seal of the State, known to every one to be authentic, even to the counsel of defendant, were ap-

pended to the certificate when it was offered in evidence. It was no error to admit it as tending to prove the fact of registration, but it was shown by other competent proof that the bonds were duly registered and this official certificate made evidence of the highest character by our statutes; proving itself upon production in any court was merely a supplemental proof of the fact.

It is claimed that the court erroneously excluded testimony tending to prove non-registration in the county, and also tending to prove that there was no record of local registration. Now, when we have proven that the county was in existence, and that the signatures to the bonds were the genuine signatures of the *de facto* officers, then the bonds themselves were the highest evidence—indeed, were conclusive and indisputable evidence—of every fact recited upon their face, and each bond recited that it had been registered in the county as required by law. In addition, such fact was prerequisite to registration by the auditor and was of necessity found by him; but, outside of the registration, the recital made by the officers binds the county and estops denial of the fact. School District *vs.* Stone and cognate cases have relation only to the allowance of proof concerning essential facts not recited or ambiguously recited upon the face of the bonds. In School District *vs.* Stone there was a constitutional limitation upon the amount of bonds the municipal corporation might lawfully issue. The recital did not in terms traverse a violation of or aver a compliance with the law in this respect. Indeed, fairly and literally construed, the recital in question only alleged that the election under which the bonds were issued was held in compliance with law. This Court decided that such recital

did not occlude proof of over-issue. The cases of Dixon County *vs.* Field, 111 U. S., 93; National Bank *vs.* Porter Township, 110 U. S., 608; Buchanan *vs.* Litchfield, 102 U. S., 278, all turn on constitutional prohibitions not concluded by clear and unambiguous recitals. This Court has shown a special solicitude in the observance of limitations upon the right to issue bonds fixed in the organic laws of the State and seems to require in such cases a more absolute and complete recital. The bonds in the case at bar recite registration in the county. It was a requirement referred to the officers and under their control, and their recital of compliance is conclusive upon the municipality; but, even without a recital, no error is shown in the exclusion of this testimony, because it does not appear in the record that any competent or admissible testimony to prove non-registration was offered.

III.

The case of Bissell *vs.* Spring Valley Township, cited by plaintiff in error, has no bearing whatever upon this case. In that case the bonds were issued long prior to the act of 1872, and were denied the protection of registration for want of compliance with section 15 of the act. In pleading the bond, therefore (giving a copy, as required by our code), we of necessity plead the recital made by the officers on the face of the bond. Such recital averring that the bond had been registered in the county, we are under no more necessity of specially pleading such fact than we would be to particularly aver that the bond was issued for a public use pursuant to a valid election, both of which facts are also recited. We think this covers all the substantial points sought to be

made by plaintiff in error not adverted to in our brief already on file.

In a word, we met the burden imposed upon us; proved that the county was organized, and that the *de facto* officers of the county executed the bonds, and that they came to our hands for value before maturity and in the usual course of business. The bonds themselves recited a lawful public use, recognized by the law as one of the purposes for which bonds might be issued, and they also recited a compliance with all the requirements of the law prerequisite to their issue. Superadded to this, but not absolutely essential to support the bonds, is the fact of registration and the certificate of the auditor giving the sanction and the countenance of the State by its proper executive officer to the lawfulness and genuineness of the bonds. When the case thus made by the plaintiff in error was in an opportunity was given the defendant to disprove it; but by reference to the record it abundantly appears that not a syllable of competent testimony was offered by the defendant to overthrow our case; not any which the Court ought to entertain or permit to go to the jury or which would be legally admissible on any ground over our objection. We therefore confidently ask for the affirmance of the judgment.

All of which is respectfully submitted.

W. H. Rossington.
Charles Blood Smith.
E. J. Dallas.